

RECORDATION NO. 24591-R FILED

ALVORD AND ALVORD  
ATTORNEYS AT LAW  
1050 SEVENTEENTH STREET, N.W.  
SUITE 301  
WASHINGTON, D.C.  
20036

MAY 11 '05 10-31 AM  
SURFACE TRANSPORTATION BOARD

ELIAS C. ALVORD (1942)  
ELLSWORTH C. ALVORD (1964)

OF COUNSEL  
URBAN A. LESTER

(202) 393-2266  
FAX (202) 393-2156  
E-MAIL alvordlaw@aol.com

May 11, 2005

Mr. Vernon A. Williams  
Secretary  
Surface Transportation Board  
Washington, D.C. 20423

Dear Mr. Williams:

Enclosed for recordation pursuant to the provisions of 49 U.S.C. Section 11301(a) are two (2) copies of a Guaranty and Collateral Agreement, dated as of April 11, 2005, a secondary document as defined in the Board's Rules for the Recordation of Documents.

The enclosed document is a restatement of the Co-Borrower Security Agreement previously filed with the Board under Recordation Number 24591.

The names and addresses of the parties to the enclosed document are:

Administrative  
Agent

For Secured Party: LaSalle Bank National Association  
135 South LaSalle Street  
Chicago, IL 60603

Co-Borrowers and  
Grantors:

Johnstown America Corporation  
Freight Car Services, Inc.  
JAC Operations Inc.  
JAIX Leasing Company  
Freightcar Roanoke, Inc.  
17 Johns Street  
Johnstown, Pennsylvania 15907

RECORDATION NO. 24591-R FILED Execution Copy

MAY 11 '05 10-31 AM

SURFACE TRANSPORTATION BOARD

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**GUARANTY AND COLLATERAL AGREEMENT**

**dated as of April 11, 2005**

**among**

**JOHNSTOWN AMERICA CORPORATION,  
FREIGHT CAR SERVICES, INC.,  
JAC OPERATIONS, INC.,  
JAIX LEASING COMPANY,  
AND  
FREIGHTCAR ROANOKE, INC.  
as the Co-Borrowers**

**and**

**THE OTHER PARTIES HERETO,  
as Grantors,**

**and**

**LASALLE BANK NATIONAL ASSOCIATION,  
as the Administrative Agent**

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## GUARANTY AND COLLATERAL AGREEMENT

THIS GUARANTY AND COLLATERAL AGREEMENT dated as of April 11, 2005 (this "Agreement") is entered into among **JOHNSTOWN AMERICA CORPORATION**, a Delaware corporation ("JAC"), **FREIGHT CAR SERVICES, INC.**, a Delaware corporation ("Freight Car"), **JAC OPERATIONS, INC.**, a Delaware corporation ("JAC Operations"), **JAIX LEASING COMPANY**, a Delaware corporation ("JAIX Leasing"), and **FREIGHTCAR ROANOKE, INC.**, a Delaware corporation ("Freightcar Roanoke") (each a "Co-Borrower" and a "Grantor", and collectively the "Co-Borrowers"), **JAC PATENT COMPANY**, a Delaware corporation ("JAC Patent" and a "Grantor"), **FREIGHTCAR AMERICA, INC.**, a Delaware corporation, formerly known as FCA Acquisition Corp., successor-by-merger to FreightCar America, Inc., formerly known as JAC Holdings International, Inc. ("Holdings" and a "Grantor"), **JAC INTERMEDCO, INC.**, a Delaware corporation ("JAC Intermedco" and a "Grantor") and each other Person signatory hereto as a Grantor (together with any other Person that becomes a party hereto as provided herein, the "Grantors") in favor of LASALLE BANK NATIONAL ASSOCIATION (in its individual capacity, "LaSalle"), as the administrative agent (the "Administrative Agent") for all the Lenders party to the Credit Agreement (as hereafter defined).

### RECITALS

The Co-Borrowers (excluding FreightCar Roanoke) have entered into certain financing arrangements with LaSalle, including that certain Credit Agreement dated as of September 11, 2003 (as the same may have been amended, supplemented, restated or otherwise modified, the "Original Credit Agreement").

In connection with the Original Credit Agreement, the Co-Borrowers (excluding FreightCar Roanoke) and certain of the Grantors entered into the following agreements:

1. A Co-Borrower Security Agreement entered into by the Co-Borrowers (excluding FreightCar Roanoke) and LaSalle dated as of September 11, 2003 (as the same may have been amended, supplemented, restated or otherwise modified, the "Co-Borrower Security Agreement");
2. A Patent and Trademark Security Agreement entered into by JAC Patent and LaSalle dated as of September 11, 2003 (as the same may have been amended, supplemented, restated or otherwise modified, the "Patent and Trademark Security Agreement");
3. A Collateral Pledge Agreement entered into by JAC and LaSalle dated as of September 11, 2003 (as the same may have been amended, supplemented, restated or otherwise modified, the "JAC Collateral Pledge Agreement");
4. A Collateral Pledge Agreement entered into by JAC Operations and LaSalle dated as of September 11, 2003 (as the same may have been amended, supplemented, restated or otherwise modified, the "JAC Operations Collateral Pledge Agreement");

5. A Guaranty entered into by Holdings for the benefit of LaSalle dated as of September 11, 2003 (as the same may have been amended, supplemented, restated or otherwise modified, the "Holdings Guaranty");

6. A Guaranty entered into by JAC Intermedco, Inc. for the benefit of LaSalle dated as of September 11, 2003 (as the same may have been amended, supplemented, restated or otherwise modified, the "JAC Intermedco Guaranty"); and

7. A Guaranty entered into by JAC Patent for the benefit of LaSalle dated as of September 11, 2003 (as the same may have been amended, supplemented, restated or otherwise modified, the "JAC Patent Guaranty"; and together with the Co-Borrower Security Agreement, the Patent and Trademark Security Agreement, the JAC Collateral Pledge Agreement, the JAC Operations Collateral Pledge Agreement, the Holdings Guaranty and the JAC Intermedco Guaranty, the "Original Collateral Documents").

The Co-Borrowers (including FreightCar Roanoke) and the Grantors party to the Original Collateral Documents have requested that LaSalle make certain amendments to the Original Credit Agreement and the Original Collateral Documents.

The Co-Borrowers (including FreightCar Roanoke), LaSalle, in its individual capacity and as Administrative Agent, and the Lenders have agreed to amend and restate the Original Credit Agreement in its entirety as an Amended and Restated Credit Agreement dated as of the date hereof (as the same may be amended, supplemented, restated or otherwise modified from time to time, the "Credit Agreement").

As a condition to the effectiveness of the Credit Agreement, the Lenders have required that the Original Collateral Documents be amended and restated in their entirety in the form of this Agreement.

The Lenders have severally agreed to extend credit to the Co-Borrowers pursuant to the Credit Agreement. The Co-Borrowers are affiliated with each other Grantor. The proceeds of credit extended under the Credit Agreement will be used in part to enable the Co-Borrowers to make valuable transfers to the other Grantors in connection with the operation of their respective businesses. The Co-Borrowers and the other Grantors are engaged in interrelated businesses, and each Grantor will derive substantial direct and indirect benefit from extensions of credit under the Credit Agreement. It is a condition precedent to each Lender's obligation to extend credit under the Credit Agreement that the Grantors shall have executed and delivered this Agreement to the Administrative Agent for the ratable benefit of all the Lenders.

In consideration of the premises and to induce the Administrative Agent and the Lenders to enter into the Credit Agreement and to induce the Lenders to extend credit thereunder, each Grantor hereby agrees with the Administrative Agent, for the ratable benefit of the Lenders, as follows:

## SECTION 1 DEFINITIONS.

1.1 Unless otherwise defined herein, terms defined in the Credit Agreement and used herein shall have the meanings given to them in the Credit Agreement, and the following terms are used herein as defined in the UCC: Accounts, Certificated Security, Commercial Tort Claims, Deposit Accounts, Documents, Electronic Chattel Paper, Equipment, Goods, Instruments, Inventory, Leases, Letter-of-Credit Rights, Money, Payment Intangibles, Supporting Obligations, Tangible Chattel Paper.

1.2 When used herein the following terms shall have the following meanings:

Agreement has the meaning set forth in the preamble hereto.

Chattel Paper means all "chattel paper" as such term is defined in Section 9-102(a)(11) of the UCC and, in any event, including with respect to any Grantor, all Electronic Chattel Paper and Tangible Chattel Paper.

Collateral means (a) all of the personal property now owned or at any time hereafter acquired by any Grantor or in which any Grantor now has or at any time in the future may acquire any right, title or interest, including all of each Grantor's Accounts, Chattel Paper, Commercial Tort Claims, Deposit Accounts, Documents, Equipment, Fixtures, General Intangibles, Goods, Instruments, Intellectual Property, Inventory, Investment Property, Leases, Letter-of-Credit Rights, Money, Supporting Obligations, Rolling Stock and Identified Claims, (b) all books and records pertaining to any of the foregoing, (c) all Proceeds and products of any of the foregoing, and (d) all collateral security and guaranties given by any Person with respect to any of the foregoing. Where the context requires, terms relating to the Collateral or any part thereof, when used in relation to a Grantor, shall refer to such Grantor's Collateral or the relevant part thereof.

Co-Borrower Obligations means all Obligations of each Co-Borrower.

Copyrights means all copyrights arising under the laws of the United States, any other country or any political subdivision thereof, whether registered or unregistered and whether published or unpublished, including those listed on Schedule 4.8, all registrations and recordings thereof, and all applications in connection therewith, including all registrations, recordings and applications in the United States Copyright Office, and the right to obtain all renewals of any of the foregoing.

Copyright Licenses means all written agreements naming any Grantor as licensor or licensee, including those listed on Schedule 4.8, granting any right under any Copyright, including the grant of rights to manufacture, distribute, exploit and sell materials derived from any Copyright.

Credit Agreement has the meaning specified in the Recitals.

Fixtures means all of the following, whether now owned or hereafter acquired by a Grantor: plant fixtures; business fixtures; other fixtures and storage facilities, wherever located; and all additions and accessories thereto and replacements therefor.

General Intangibles means all "general intangibles" as such term is defined in Section 9-102(a)(42) of the UCC and, in any event, including with respect to any Grantor, all Payment Intangibles, all contracts and contract rights, agreements, instruments and indentures in any form, and portions thereof, to which such Grantor is a party or under which such Grantor has any right, title or interest or to which such Grantor or any property of such Grantor is subject, as the same from time to time may be amended, supplemented or otherwise modified, including, without limitation, (a) all rights of such Grantor to receive moneys due and to become due to it thereunder or in connection therewith, (b) all rights of such Grantor to damages arising thereunder and (c) all rights of such Grantor to perform and to exercise all remedies thereunder; provided, that the foregoing limitation shall not affect, limit, restrict or impair the grant by such Grantor of a security interest pursuant to this Agreement in any Receivable or any money or other amounts due or to become due under any such Payment Intangible, contract, agreement, instrument or indenture.

Guarantor Obligations means, collectively, with respect to each Guarantor, all obligations of such Guarantor under Section 2 of this Agreement.

Guarantors means the collective reference to each Grantor other than the Co-Borrowers.

Identified Claims means the Commercial Tort Claims described on Schedule 5.9 as such schedule shall be supplemented from time to time.

Intellectual Property means the collective reference to all rights, priorities and privileges relating to intellectual property, whether arising under United States, multinational or foreign laws or otherwise, including the Copyrights, the Copyright Licenses, the Patents, the Patent Licenses, the Trademarks and the Trademark Licenses, and all rights to sue at law or in equity for any infringement or other impairment thereof, including the right to receive all proceeds and damages therefrom.

Intercompany Note means any promissory note evidencing loans made by any Grantor to any other Grantor.

Investment Property means the collective reference to (a) all "investment property" as such term is defined in Section 9-102(a)(49) of the UCC (other than the equity interest of any foreign Subsidiary excluded from the definition of Pledged Equity), (b) all "financial assets" as such term is defined in Section 8-102(a)(9) of the UCC, and (c) whether or not constituting "investment property" as so defined, all Pledged Notes and all Pledged Equity.

Issuers means the collective reference to each issuer of any Investment Property.

Paid in Full means (a) the payment in full in cash and performance of all Secured Obligations, (b) the termination of all Commitments and (c) either (i) the cancellation and return

to the Administrative Agent of all Letters of Credit or (ii) the cash collateralization of all Letters of Credit in accordance with the Credit Agreement.

Patents means (a) all letters patent of the United States, any other country or any political subdivision thereof, all reissues and extensions thereof and all goodwill associated therewith, including any of the foregoing referred to in Schedule 4.8, (b) all applications for letters patent of the United States or any other country and all divisions, continuations and continuations-in-part thereof, including any of the foregoing referred to in Schedule 4.8, and (c) all rights to obtain any reissues or extensions of the foregoing.

Patent Licenses means all agreements, whether written or oral, providing for the grant by or to any Grantor of any right to manufacture, use or sell any invention covered in whole or in part by a Patent, including any of the foregoing referred to in Schedule 4.8.

Pledged Equity means the equity interests listed on Schedule 4.6, together with any other equity interests, certificates, options or rights of any nature whatsoever in respect of the equity interests of any Person that may be issued or granted to, or held by, any Grantor while this Agreement is in effect; provided that in no event shall more than 65% of the total outstanding equity interests of any foreign Subsidiary be required to be pledged hereunder.

Pledged Notes means all promissory notes listed on Schedule 4.6, all Intercompany Notes at any time issued to any Grantor and all other promissory notes issued to or held by any Grantor.

Proceeds means all "proceeds" as such term is defined in Section 9-102(a)(64) of the UCC and, in any event, shall include all dividends or other income from the Investment Property, collections thereon or distributions or payments with respect thereto.

Receivable means any right to payment for goods sold or leased or for services rendered, whether or not such right is evidenced by an Instrument or Chattel Paper and whether or not it has been earned by performance (including any Accounts).

Rolling Stock means all locomotives, boxcars, hoppers, tank cars, cabooses, and any and all other railroad cars owned by any Grantor, and any such railroad cars hereafter acquired by any Grantor.

Secured Obligations means, collectively, the Co-Borrower Obligations and Guarantor Obligations.

Securities Act means the Securities Act of 1933, as amended.

Trademarks means (a) all trademarks, trade names, corporate names, the names of each Grantor, business names, fictitious business names, trade styles, service marks, logos and other source or business identifiers, and all goodwill associated therewith, now existing or hereafter adopted or acquired, all registrations and recordings thereof, and all applications in connection therewith, whether in the United States Patent and Trademark Office or in any similar office or agency of the United States, any State thereof or any other country or any political subdivision

thereof, or otherwise, and all common-law rights related thereto, including any of the foregoing referred to in Schedule 4.8, and (b) the right to obtain all renewals thereof.

Trademark Licenses means, collectively, each agreement, whether written or oral, providing for the grant by or to any Grantor of any right to use any Trademark, including any of the foregoing referred to in Schedule 4.8.

UCC means the Uniform Commercial Code as in effect on the date hereof and from time to time in the State of Illinois, provided that if by reason of mandatory provisions of law, the perfection or the effect of perfection or non-perfection of the security interests in any Collateral or the availability of any remedy hereunder is governed by the Uniform Commercial Code as in effect on or after the date hereof in any other jurisdiction, "UCC" means the Uniform Commercial Code as in effect in such other jurisdiction for purposes of the provisions hereof relating to such perfection or effect of perfection or non-perfection or availability of such remedy.

## SECTION 2 GUARANTY.

2.1 Guaranty. (a) Each of the Guarantors hereby, jointly and severally, unconditionally and irrevocably, as a primary obligor and not only a surety, guaranties to the Administrative Agent, for the ratable benefit of the Lenders and their respective successors, indorsees, transferees and assigns, the prompt and complete payment and performance by the Co-Borrowers when due (whether at the stated maturity, by acceleration or otherwise) of the Co-Borrower Obligations.

(b) Anything herein or in any other Loan Document to the contrary notwithstanding, the maximum liability of each Guarantor hereunder and under the other Loan Documents shall in no event exceed the amount which can be guarantied by such Guarantor under applicable federal and state laws relating to the insolvency of debtors (after giving effect to the right of contribution established in Section 2.2).

(c) Each Guarantor agrees that the Co-Borrower Obligations may at any time and from time to time exceed the amount of the liability of such Guarantor hereunder without impairing the guaranty contained in this Section 2 or affecting the rights and remedies of the Administrative Agent or any Lender hereunder.

(d) The guaranty contained in this Section 2 shall remain in full force and effect until all of the Co-Borrower Obligations shall have been Paid in Full.

(e) No payment made by the Co-Borrowers, any of the Guarantors, any other guarantor or any other Person or received or collected by the Administrative Agent or any Lender from the Co-Borrowers, any of the Guarantors, any other guarantor or any other Person by virtue of any action or proceeding or any set-off or appropriation or application at any time or from time to time in reduction of or in payment of the Co-Borrower Obligations shall be deemed to modify, reduce, release or otherwise affect the liability of any Guarantor hereunder which shall, notwithstanding any such payment (other than any payment made by such Guarantor in respect of the Co-Borrower Obligations or any payment received or collected from such



Guarantor in respect of the Co-Borrower Obligations), remain liable for the Co-Borrower Obligations up to the maximum liability of such Guarantor hereunder until the Secured Obligations are Paid in Full.

2.2 Right of Contribution. Each Guarantor hereby agrees that to the extent that a Guarantor shall have paid more than its proportionate share of any payment made hereunder, such Guarantor shall be entitled to seek and receive contribution from and against any other Guarantor hereunder which has not paid its proportionate share of such payment. Each Guarantor's right of contribution shall be subject to the terms and conditions of Section 2.3. The provisions of this Section 2.2 shall in no respect limit the obligations and liabilities of any Guarantor to the Administrative Agent and the Lenders, and each Guarantor shall remain liable to the Administrative Agent and the Lenders for the full amount guaranteed by such Guarantor hereunder.

2.3 No Subrogation. Notwithstanding any payment made by any Guarantor hereunder or any set-off or application of funds of any Guarantor by the Administrative Agent or any Lender, no Guarantor shall be entitled to be subrogated to any of the rights of the Administrative Agent or any Lender against the Co-Borrowers or any other Guarantor or any collateral security or guaranty or right of offset held by the Administrative Agent or any Lender for the payment of the Co-Borrower Obligations, nor shall any Guarantor seek or be entitled to seek any contribution or reimbursement from the Co-Borrowers or any other Guarantor in respect of payments made by such Guarantor hereunder, until all of the Co-Borrower Obligations are Paid in Full, no Letter of Credit shall be outstanding and the Commitments are terminated. If any amount shall be paid to any Guarantor on account of such subrogation rights at any time when all of the Co-Borrower Obligations shall not have been Paid in Full, such amount shall be held by such Guarantor in trust for the Administrative Agent and the Lenders, segregated from other funds of such Guarantor, and shall, forthwith upon receipt by such Guarantor, be turned over to the Administrative Agent in the exact form received by such Guarantor (duly indorsed by such Guarantor to the Administrative Agent, if required), to be applied against the Co-Borrower Obligations, whether matured or unmatured, in such order as the Administrative Agent may determine.

2.4 Amendments, etc. with respect to the Co-Borrower Obligations. Each Guarantor shall remain obligated hereunder notwithstanding that, without any reservation of rights against any Guarantor and without notice to or further assent by any Guarantor, any demand for payment of any of the Co-Borrower Obligations made by the Administrative Agent or any Lender may be rescinded by the Administrative Agent or such Lender and any of the Co-Borrower Obligations continued, and the Co-Borrower Obligations, or the liability of any other Person upon or for any part thereof, or any collateral security or guaranty therefor or right of offset with respect thereto, may, from time to time, in whole or in part, be renewed, extended, amended, modified, accelerated, compromised, waived, surrendered or released by the Administrative Agent or any Lender, and the Credit Agreement and the other Loan Documents and any other documents executed and delivered in connection therewith may be amended, modified, supplemented or terminated, in whole or in part, as the Administrative Agent (or the Required Lenders or all the Lenders, as the case may be) may deem advisable from time to time. Neither the Administrative Agent nor any Lender shall have any obligation to protect, secure,

perfect or insure any Lien at any time held by it as security for the Secured Obligations or any property subject thereto.

The Administrative Agent or any Lender may, from time to time, at its sole discretion and without notice to any Guarantor (or any of them), take any or all of the following actions: (a) retain or obtain a security interest in any property to secure any of the Secured Obligations or any obligation hereunder, (b) retain or obtain the primary or secondary obligation of any obligor or obligors, in addition to the undersigned, with respect to any of the Secured Obligations, (c) extend or renew any of the Secured Obligations for one or more periods (whether or not longer than the original period), alter or exchange any of the Secured Obligations, or release or compromise any obligation of any of the undersigned hereunder or any obligation of any nature of any other obligor with respect to any of the Secured Obligations, (d) release any guaranty or right of offset or its security interest in, or surrender, release or permit any substitution or exchange for, all or any part of any property securing any of the Secured Obligations or any obligation hereunder, or extend or renew for one or more periods (whether or not longer than the original period) or release, compromise, alter or exchange any obligations of any nature of any obligor with respect to any such property, and (e) resort to the undersigned (or any of them) for payment of any of the Secured Obligations when due, whether or not the Administrative Agent or such Lender shall have resorted to any property securing any of the Secured Obligations or any obligation hereunder or shall have proceeded against any other of the undersigned or any other obligor primarily or secondarily obligated with respect to any of the Secured Obligations.

2.5 Waivers. Each Guarantor waives any and all notice of the creation, renewal, extension or accrual of any of the Co-Borrower Obligations and notice of or proof of reliance by the Administrative Agent or any Lender upon the guaranty contained in this Section 2 or acceptance of the guaranty contained in this Section 2; the Co-Borrower Obligations, and any of them, shall conclusively be deemed to have been created, contracted or incurred, or renewed, extended, amended or waived, in reliance upon the guaranty contained in this Section 2, and all dealings between the Co-Borrowers and any of the Guarantors, on the one hand, and the Administrative Agent and the Lenders, on the other hand, likewise shall be conclusively presumed to have been had or consummated in reliance upon the guaranty contained in this Section 2. Each Guarantor waives (a) diligence, presentment, protest, demand for payment and notice of default, dishonor or nonpayment and all other notices whatsoever to or upon the Co-Borrowers or any of the Guarantors with respect to the Secured Obligations, (b) notice of the existence or creation or non-payment of all or any of the Secured Obligations and (c) all diligence in collection or protection of or realization upon any Secured Obligations or any security for or guaranty of any Secured Obligations.

2.6 Payments. Each Guarantor hereby guaranties that payments hereunder will be paid to the Administrative Agent without set-off or counterclaim in Dollars at the office of the Administrative Agent specified in the Credit Agreement.

### SECTION 3 GRANT OF SECURITY INTEREST.

3.1 Grant. Each Grantor hereby assigns and transfers to the Administrative Agent, and hereby grants to the Administrative Agent, for the ratable benefit of the Lenders and

(to the extent provided herein) their Affiliates, a continuing security interest in all of its Collateral, as collateral security for the prompt and complete payment and performance when due (whether at the stated maturity, by acceleration or otherwise) of the Co-Borrower Obligations or the Guarantor Obligations, as the case may be.

#### SECTION 4 REPRESENTATIONS AND WARRANTIES.

To induce the Administrative Agent and the Lenders to enter into the Credit Agreement and to induce the Lenders to make their respective extensions of credit to the Co-Borrowers thereunder, each Grantor jointly and severally hereby represents and warrants to the Administrative Agent and each Lender that:

4.1 Title; No Other Liens. Except for Permitted Liens, the Grantors own each item of the Collateral free and clear of any and all Liens or claims of others. On the date hereof, no financing statement or other public notice with respect to all or any part of the Collateral is on file or of record in any public office, except filings evidencing Permitted Liens and filings for which termination statements have been delivered to the Administrative Agent.

4.2 Perfected First Priority Liens. The security interests granted pursuant to this Agreement in Collateral in which a security interest may be perfected by the filing of a financing statement (a) upon completion of the filings and other actions specified on Schedule 4.2 (which, in the case of all filings and other documents referred to on Schedule 4.2, have been delivered to the Administrative Agent in completed and duly executed form) will constitute valid perfected security interests in such Collateral in favor of the Administrative Agent, for the ratable benefit of the Lenders, as collateral security for each Grantor's Obligations, enforceable in accordance with the terms hereof against all creditors of each Grantor and any Persons purporting to purchase such Collateral from each Grantor and (b) are prior to all other Liens on such Collateral in existence on the date hereof except for Permitted Liens for which priority is accorded under applicable law.

4.3 Grantor Information. On the date hereof, Schedule 4.3 sets forth (a) each Grantor's jurisdiction of organization, (b) the location of each Grantor's chief executive office, (c) each Grantor's exact legal name as it appears on its organizational documents and (d) each Grantor's organizational identification number (to the extent a Grantor is organized in a jurisdiction which assigns such numbers) and federal employer identification number.

4.4 Collateral Locations. On the date hereof, Schedule 4.4 sets forth (a) each place of business of each Grantor (including its chief executive office), (b) all locations where all Inventory and the Equipment owned by each Grantor is kept and (c) whether each such Collateral location and place of business (including each Grantor's chief executive office) is owned or leased (and if leased, specifies the complete name and notice address of each lessor). No Collateral is located outside the United States or in the possession of any lessor, bailee, warehouseman or consignee, except as indicated on Schedule 4.4.

4.5 Certain Property. None of the Collateral constitutes, or is the Proceeds of vessels, aircraft or any other property subject to any certificate of title or other registration statute of the United States, any State or other jurisdiction, except for (i) vehicles owned by the Grantors

and used by employees of the Grantors in the ordinary course of business and (ii) Rolling Stock. All action by each Grantor necessary or desirable to protect and perfect the Lien of the Administrative Agent on the Rolling Stock (including all necessary filings with the offices of the relevant secretaries of state or other required governmental authorities) has been duly taken.

4.6 Investment Property. (a) The Pledged Equity pledged by each Grantor hereunder constitutes all the issued and outstanding equity interests of each Issuer owned by such Grantor or, in the case of any foreign Subsidiary, 65% of all issued and outstanding equity interests of such foreign Subsidiary owned by such Grantor.

(b) All of the Pledged Equity has been duly and validly issued and is fully paid and nonassessable.

(c) Each of the Pledged Notes constitutes the legal, valid and binding obligation of the obligor with respect thereto, enforceable in accordance with its terms (subject to the effects of bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium and other similar laws relating to or affecting creditors' rights generally, general equitable principles (whether considered in a proceeding in equity or at law) and an implied covenant of good faith and fair dealing).

(d) Schedule 4.6 lists all Investment Property owned by each Grantor. Each Grantor is the record and beneficial owner of, and has good and marketable title to, the Investment Property pledged by it hereunder, free of any and all Liens or options in favor of, or claims of, any other Person, except Permitted Liens.

4.7 Receivables. No material amount payable to such Grantor under or in connection with any Receivable is evidenced by any Instrument or Chattel Paper which has not been delivered to the Administrative Agent.

4.8 Intellectual Property. Schedule 4.8 lists all Intellectual Property owned by such Grantor in its own name on the date hereof.

4.9 Depository and Other Accounts. All depository and other accounts maintained by each Grantor are described on Schedule 4.9 hereto, which description includes for each such account the name of the Grantor maintaining such account, the name, address, telephone and fax numbers of the financial institution at which such account is maintained, the account number and the account officer, if any, of such account.

4.10 Holdings. Holdings has not engaged in any activities other than acting as a holding company for the Co-Borrowers and the other subsidiary Grantors and transactions incidental thereto and holds no assets other than, directly, all of the issued and outstanding capital stock of JAC Intermedco and, indirectly, all of the issued and outstanding capital stock of the Co-Borrowers and the other subsidiary Grantors.

## SECTION 5 COVENANTS.

Each Grantor covenants and agrees with the Administrative Agent and the Lenders that, from and after the date of this Agreement until the Co-Borrower Obligations shall have been Paid in Full:

5.1 Delivery of Instruments, Certificated Securities and Chattel Paper. If any Grantor shall at any time hold any Instrument, Certificated Security, or Chattel Paper with a face amount in excess of \$100,000 (in the aggregate for all Grantors), such Instrument, Certificated Security or Chattel Paper shall be immediately delivered to the Administrative Agent, duly indorsed in a manner satisfactory to the Administrative Agent, to be held as Collateral pursuant to this Agreement. In the event that an Unmatured Event of Default or Event of Default shall have occurred and be continuing, upon the request of the Administrative Agent, any Instrument, Certificated Security or Chattel Paper not theretofore delivered to the Administrative Agent and at such time being held by any Grantor shall be immediately delivered to the Administrative Agent, duly indorsed in a manner satisfactory to the Administrative Agent, to be held as Collateral pursuant to this Agreement.

5.2 Maintenance of Perfected Security Interest; Further Documentation. (a) Such Grantor shall maintain the security interest created by this Agreement as a perfected security interest having at least the priority described in Section 4.2 and shall defend such security interest against the claims and demands of all Persons whomsoever.

(b) At any time and from time to time, upon the written request of the Administrative Agent, and at the sole expense of such Grantor, such Grantor will promptly and duly execute and deliver, and have recorded, such further instruments and documents and take such further actions as the Administrative Agent may reasonably request for the purpose of obtaining or preserving the full benefits of this Agreement and of the rights and powers herein granted, including (i) filing any financing or continuation statements under the UCC (or other similar laws) in effect in any jurisdiction with respect to the security interests created hereby, (ii) in the case of Investment Property and any other relevant Collateral, taking any actions necessary to enable the Administrative Agent to obtain "control" (within the meaning of the applicable UCC) with respect thereto, (iii) if requested by the Administrative Agent, delivering, to the extent permitted by law, any original motor vehicle certificates of title received by such Grantor for the applicable secretary of state or other governmental authority after the information reflecting the Administrative Agent's security interest has been recorded therein, and (iv) filing any documents with the Surface Transportation Board with respect to the Rolling Stock.

5.3 Changes in Locations, Name, etc. Such Grantor shall not, except upon 30 days' prior written notice to the Administrative Agent and delivery to the Administrative Agent of (a) all additional financing statements and other documents reasonably requested by the Administrative Agent as to the validity, perfection and priority of the security interests provided for herein and (b) if applicable, a written supplement to Schedule 4.4 showing any additional location at which Inventory or Equipment shall be kept:

(i) permit any of the Inventory or Equipment to be kept at a location other than those listed on Schedule 4.4;

(ii) change its jurisdiction of organization or the location of its chief executive office from that specified on Schedule 4.3 or in any subsequent notice delivered pursuant to this Section 5.3; or

(iii) change its name, identity or corporate structure.

5.4 [Reserved]

5.5 Investment Property. (a) If such Grantor shall receive any certificate, option or rights in respect of the equity interests of any Issuer, whether in addition to, in substitution of, as a conversion of, or in exchange for, any of the Pledged Equity, or otherwise in respect thereof, such Grantor shall accept the same as the agent of the Administrative Agent and the Lenders, hold the same in trust for the Administrative Agent and the Lenders and deliver the same forthwith to the Administrative Agent in the exact form received, duly indorsed by such Grantor to the Administrative Agent, if required, together with an undated instrument of transfer covering such certificate duly executed in blank by such Grantor and with, if the Administrative Agent so requests, signature guaranteed, to be held by the Administrative Agent, subject to the terms hereof, as additional Collateral for the Secured Obligations. Upon the occurrence and during the continuance of an Event of Default, (i) any sums paid upon or in respect of the Investment Property upon the liquidation or dissolution of any Issuer shall be paid over to the Administrative Agent to be held by it hereunder as additional Collateral for the Secured Obligations, and (ii) in case any distribution of capital shall be made on or in respect of the Investment Property or any property shall be distributed upon or with respect to the Investment Property pursuant to the recapitalization or reclassification of the capital of any Issuer or pursuant to the reorganization thereof, the property so distributed shall, unless otherwise subject to a perfected Lien in favor of the Administrative Agent, be delivered to the Administrative Agent to be held by it hereunder as additional Collateral for the Secured Obligations. Upon the occurrence and during the continuance of an Event of Default, if any sums of money or property so paid or distributed in respect of the Investment Property shall be received by such Grantor, such Grantor shall, until such money or property is paid or delivered to the Administrative Agent, hold such money or property in trust for the Lenders, segregated from other funds of such Grantor, as additional Collateral for the Secured Obligations.

(b) Without the prior written consent of the Administrative Agent, such Grantor will not (i) vote to enable, or take any other action to permit, any Issuer to issue any equity interests of any nature or to issue any other securities or interests convertible into or granting the right to purchase or exchange for any equity interests of any nature of any Issuer, except, in each case, as permitted by the Credit Agreement, (ii) sell, assign, transfer, exchange, or otherwise dispose of, or grant any option with respect to, the Investment Property or Proceeds thereof (except pursuant to a transaction expressly permitted by the Credit Agreement) other than, with respect to Investment Property not constituting Pledged Equity or Pledged Notes, any such action which is not prohibited by the Credit Agreement, (iii) create, incur or permit to exist any Lien or option in favor of, or any claim of any Person with respect to, any of the Investment Property or Proceeds thereof, or any interest therein, except for Permitted Liens, or (iv) enter into any agreement or undertaking restricting the right or ability of such Grantor or the Administrative Agent to sell, assign or transfer any of the Investment Property or Proceeds thereof, except, with respect to such Investment Property, shareholders' agreements entered into

by such Grantor with respect to Persons in which such Grantor maintains an ownership interest of 50% or less.

(c) In the case of each Grantor which is an Issuer, such Issuer agrees that (i) it will be bound by the terms of this Agreement relating to the Investment Property issued by it and will comply with such terms insofar as such terms are applicable to it, (ii) it will notify the Administrative Agent promptly in writing of the occurrence of any of the events described in Section 5.5(a) with respect to the Investment Property issued by it and (iii) the terms of Sections 6.3(c) and 6.7 shall apply to such Grantor with respect to all actions that may be required of it pursuant to Section 6.3(c) or 6.7 regarding the Investment Property issued by it.

5.6 Receivables. Other than in the ordinary course of business consistent with its past practice and in amounts which are not material to such Grantor, such Grantor will not (i) grant any extension of the time of payment of any Receivable, (ii) compromise or settle any Receivable for less than the full amount thereof, (iii) release, wholly or partially, any Person liable for the payment of any Receivable, (iv) allow any credit or discount whatsoever on any Receivable or (v) amend, supplement or modify any Receivable in any manner that could adversely affect the value thereof.

5.7 Intellectual Property. (a) Such Grantor (either itself or through licensees) will (i) continue to maintain each Trademark material to its business in full force free from any claim of abandonment for non-use, (ii) use such Trademark with the appropriate notice of registration and all other notices and legends required by applicable law, (iii) not adopt or use any mark which is confusingly similar or a colorable imitation of such Trademark unless the Administrative Agent, for the ratable benefit of the Lenders, shall obtain a perfected security interest in such mark pursuant to this Agreement, and (v) not (and not permit any licensee or sublicensee thereof to) do any act or knowingly omit to do any act whereby such Trademark would reasonably be expected to become invalidated or impaired in any material way.

(b) Such Grantor (either itself or through licensees) will not do any act, or omit to do any act, whereby any Patent material to its business may become forfeited, abandoned or dedicated to the public.

(c) Such Grantor (either itself or through licensees) (i) will maintain each Copyright material to its business and (ii) will not (and will not permit any licensee or sublicensee thereof to) do any act or knowingly omit to do any act whereby any material portion of such Copyrights may become invalidated or otherwise impaired. Such Grantor will not (either itself or through licensees) do any act whereby any material portion of such Copyrights may fall into the public domain.

(d) Such Grantor (either itself or through licensees) will not do any act that knowingly uses any Intellectual Property material to its business to infringe the intellectual property rights of any other Person.

(e) Such Grantor will notify the Administrative Agent and the Lenders immediately if it knows, or has reason to know, that any application or registration relating to any material Intellectual Property may become forfeited, abandoned or dedicated to the public,

or of any adverse determination or development (including the institution of, or any such determination or development in, any proceeding in the United States Patent and Trademark Office, the United States Copyright Office or any court or tribunal in any country) regarding, such Grantor's ownership of, or the validity of, any material Intellectual Property or such Grantor's right to register the same or to own and maintain the same.

(f) Whenever such Grantor, either by itself or through any agent, employee, licensee or designee, shall file an application for the registration of any Intellectual Property with the United States Patent and Trademark Office, the United States Copyright Office or any similar office or agency in any other country or any political subdivision thereof, such Grantor shall report such filing to the Administrative Agent concurrently with the next delivery of financial statements of the Co-Borrowers pursuant to Section 10.1 of the Credit Agreement. Upon the request of the Administrative Agent, such Grantor shall execute and deliver, and have recorded, any and all agreements, instruments, documents, and papers as the Administrative Agent may request to evidence the Administrative Agent's and the Lenders' security interest in any Copyright, Patent or Trademark and the goodwill and general intangibles of such Grantor relating thereto or represented thereby.

(g) Such Grantor will take all reasonable and necessary steps to maintain and pursue each application (and to obtain the relevant registration) and to maintain each registration of all material Intellectual Property owned by it.

(h) In the event that any material Intellectual Property is infringed upon or misappropriated or diluted by a third party, such Grantor shall (i) take such actions as such Grantor shall reasonably deem appropriate under the circumstances to protect such Intellectual Property and (ii) if such Intellectual Property is of material economic value, promptly notify the Administrative Agent after it learns thereof and, to the extent, in its reasonable judgment, such Grantor determines it appropriate under the circumstances, sue for infringement, misappropriation or dilution, to seek injunctive relief where appropriate and to recover any and all damages for such infringement, misappropriation or dilution.

5.8 Depository and Other Deposit Accounts. Each Grantor shall maintain all of its principal deposit accounts with the Administrative Agent. No Grantor shall open any depository or other deposit accounts unless such Grantor shall have given the Administrative Agent 10 days' prior written notice of its intention to open any such new deposit accounts. The Grantors shall deliver to the Administrative Agent a revised version of Schedule 4.9 showing any changes thereto within 10 days following any such change. Each Grantor hereby authorizes the financial institutions at which such Grantor maintains a deposit account to provide the Administrative Agent with such information with respect to such deposit account as the Administrative Agent may from time to time reasonably request, and each Grantor hereby consents to such information being provided to the Administrative Agent. Each Grantor will, upon the Administrative Agent's request, cause each financial institution at which such Grantor maintains a depository or other deposit account to enter into a bank agency or other similar agreement with the Administrative Agent and such Grantor, in form and substance satisfactory to the Administrative Agent, in order to give the Administrative Agent "control" (as defined in the UCC) of such account.



### 5.9 Other Matters.

(a) Each of the Grantors shall use commercially reasonable efforts to cause to be delivered to the Administrative Agent, within 30 days after the Closing Date, a Collateral Access Agreement with respect to (a) each bailee with which such Grantor keeps Inventory or other assets as of the Closing Date and (b) each landlord which leases real property (and the accompanying facilities) to any of the Grantors as of the Closing Date. Such 30 day period may be extended or such requirement may be waived at the option of the Administrative Agent. If any Grantor shall cause to be delivered Inventory or other property to any bailee after the Closing Date, such Grantor shall use commercially reasonable efforts to cause such bailee to sign a Collateral Access Agreement. Such requirement may be waived at the option of the Administrative Agent. If any Grantor shall lease any real property or facilities after the Closing Date, such Grantor shall use commercially reasonable efforts to cause the landlord in respect of such leased property or facilities to sign a Collateral Access Agreement. Such requirement may be waived at the option of the Administrative Agent.

(b) Each Grantor authorizes the Administrative Agent to, at any time and from time to time, file financing statements, continuation statements, and amendments thereto that describe the Collateral as "all assets" of each Grantor, or words of similar effect, and which contain any other information required pursuant to the UCC for the sufficiency of filing office acceptance of any financing statement, continuation statement, or amendment, and each Grantor agrees to furnish any such information to the Administrative Agent promptly upon request. Any such financing statement, continuation statement, or amendment may be filed at any time in any jurisdiction.

(c) If any Grantor shall at any time, acquire a "commercial tort claim" (as such term is defined in the UCC), such Grantor shall promptly notify the Administrative Agent thereof in writing and supplement Schedule 5.9, therein providing a reasonable description and summary thereof, and upon delivery thereof to the Administrative Agent, such Grantor shall be deemed to thereby grant to the Administrative Agent (and such Grantor hereby grants to the Administrative Agent) a security interest and lien in and to such commercial tort claim and all proceeds thereof, all upon the terms of and governed by this Agreement.

(d) Without limiting the generality of the foregoing, if any Grantor at any time holds or acquires an interest in any electronic chattel paper or any "transferable record", as that term is defined in Section 201 of the federal Electronic Signatures in Global and National Commerce Act, or in §16 of the Uniform Electronic Transactions Act as in effect in any relevant jurisdiction, such Grantor shall promptly notify the Administrative Agent thereof and, at the request of the Administrative Agent, shall take such action as the Administrative Agent may reasonably request to vest in the Administrative Agent "control" under Section 9-105 of the UCC of such electronic chattel paper or control under Section 201 of the federal Electronic Signatures in Global and National Commerce Act or, as the case may be, §16 of the Uniform Electronic Transactions Act, as so in effect in such jurisdiction, of such transferable record. The Administrative Agent agrees with the Grantors that the Administrative Agent will arrange, pursuant to procedures reasonably satisfactory to the Administrative Agent and so long as such procedures will not result in the Administrative Agent's loss of control, for the Grantors to make alterations to the electronic chattel paper or transferable record permitted under Section 9-105 of

the UCC or, as the case may be, Section 201 of the federal Electronic Signatures in Global and National Commerce Act or §16 of the Uniform Electronic Transactions Act for a party in control to make without loss of control, unless an Event of Default has occurred and is continuing or would occur after taking into account any action by any Grantor with respect to such electronic chattel paper or transferable record.

## SECTION 6 REMEDIAL PROVISIONS.

6.1 Certain Matters Relating to Receivables. (a) At any time and from time to time after the occurrence and during the continuance of an Event of Default, the Administrative Agent shall have the right to make test verifications of the Receivables in any manner and through any medium that it reasonably considers advisable, and each Grantor shall furnish all such assistance and information as the Administrative Agent may reasonably require in connection with such test verifications. At any time and from time to time after the occurrence and during the continuance of an Event of Default, upon the Administrative Agent's request and at the expense of the relevant Grantor, such Grantor shall cause independent public accountants or others satisfactory to the Administrative Agent to furnish to the Administrative Agent reports showing reconciliations, agings and test verifications of, and trial balances for, the Receivables.

(b) The Administrative Agent hereby authorizes each Grantor to collect such Grantor's Receivables, and the Administrative Agent may curtail or terminate such authority at any time after the occurrence and during the continuance of an Event of Default. If required by the Administrative Agent at any time after the occurrence and during the continuance of an Event of Default, any payments of Receivables, when collected by any Grantor, (i) shall be forthwith (and, in any event, within 2 Business Days) deposited by such Grantor in the exact form received, duly indorsed by such Grantor to the Administrative Agent if required, in a collateral account maintained under the sole dominion and control of the Administrative Agent, subject to withdrawal by the Administrative Agent for the account of the Lenders only as provided in Section 6.5, and (ii) until so turned over, shall be held by such Grantor in trust for the Administrative Agent and the Lenders, segregated from other funds of such Grantor. Each such deposit of Proceeds of Receivables shall be accompanied by a report identifying in reasonable detail the nature and source of the payments included in the deposit.

(c) At any time and from time to time after the occurrence and during the continuance of an Event of Default, at the Administrative Agent's reasonable request, each Grantor shall deliver to the Administrative Agent all original and other documents evidencing, and relating to, the agreements and transactions which gave rise to the Receivables, including all original orders, invoices and shipping receipts.

6.2 Communications with Obligors; Grantors Remain Liable. (a) The Administrative Agent in its own name or in the name of others may at any time after the occurrence and during the continuance of an Event of Default communicate with obligors under the Receivables to verify with them to the Administrative Agent's satisfaction the existence, amount and terms of any Receivables.

(b) Upon the request of the Administrative Agent at any time after the occurrence and during the continuance of an Event of Default, each Grantor shall notify obligors

on the Receivables that the Receivables have been assigned to the Administrative Agent for the ratable benefit of the Lenders and that payments in respect thereof shall be made directly to the Administrative Agent.

(c) Anything herein to the contrary notwithstanding, each Grantor shall remain liable in respect of each of the Receivables to observe and perform all the conditions and obligations to be observed and performed by it thereunder, all in accordance with the terms of any agreement giving rise thereto. Neither the Administrative Agent nor any Lender shall have any obligation or liability under any Receivable (or any agreement giving rise thereto) by reason of or arising out of this Agreement or the receipt by the Administrative Agent or any Lender of any payment relating thereto, nor shall the Administrative Agent or any Lender be obligated in any manner to perform any of the obligations of any Grantor under or pursuant to any Receivable (or any agreement giving rise thereto), to make any payment, to make any inquiry as to the nature or the sufficiency of any payment received by it or as to the sufficiency of any performance by any party thereunder, to present or file any claim, to take any action to enforce any performance or to collect the payment of any amounts which may have been assigned to it or to which it may be entitled at any time or times.

(d) For the purpose of enabling the Administrative Agent to exercise rights and remedies under this Agreement, each Grantor hereby grants to the Administrative Agent, for the benefit of the Administrative Agent and the Lenders, an irrevocable, nonexclusive license (exercisable without payment of royalty or other compensation to such Grantor) to use, and, upon the occurrence and during the continuation of an Event of Default, to license or sublicense any Intellectual Property now owned or hereafter acquired by such Grantor, and wherever the same may be located, and including in such license access to all media in which any of the licensed items may be recorded or stored and to all computer software and programs used for the compilation or printout thereof.

6.3 Investment Property. (a) Unless an Event of Default shall have occurred and be continuing and the Administrative Agent shall have given notice to the relevant Grantor of the Administrative Agent's intent to exercise its corresponding rights pursuant to Section 6.3(b), each Grantor shall be permitted to receive all cash dividends and distributions paid in respect of the Pledged Equity and all payments made in respect of the Pledged Notes, to the extent permitted in the Credit Agreement, and to exercise all voting and other rights with respect to the Investment Property; provided, that no vote shall be cast or other right exercised or action taken which would reasonably be expected to have a Material Adverse Effect.

(b) If an Event of Default shall occur and be continuing and the Administrative Agent shall give notice of its intent to exercise such rights to the relevant Grantor or Grantors, (i) the Administrative Agent shall have the right to receive any and all cash dividends and distributions, payments or other Proceeds paid in respect of the Investment Property and make application thereof to the Secured Obligations in such order as the Administrative Agent may determine, and (ii) any or all of the Investment Property shall be registered in the name of the Administrative Agent or its nominee, and the Administrative Agent or its nominee may thereafter exercise (x) all voting and other rights pertaining to such Investment Property at any meeting of holders of the equity interests of the relevant Issuer or Issuers or otherwise and (y) any and all rights of conversion, exchange and subscription and any

other rights, privileges or options pertaining to such Investment Property as if it were the absolute owner thereof (including the right to exchange at its discretion any and all of the Investment Property upon the merger, consolidation, reorganization, recapitalization or other fundamental change in the corporate or other structure of any Issuer, or upon the exercise by any Grantor or the Administrative Agent of any right, privilege or option pertaining to such Investment Property, and in connection therewith, the right to deposit and deliver any and all of the Investment Property with any committee, depository, transfer agent, registrar or other designated agency upon such terms and conditions as the Administrative Agent may determine), all without liability except to account for property actually received by it, but the Administrative Agent shall have no duty to any Grantor to exercise any such right, privilege or option and shall not be responsible for any failure to do so or delay in so doing.

(c) Each Grantor hereby authorizes and instructs each Issuer of any Investment Property pledged by such Grantor hereunder to (i) comply with any instruction received by it from the Administrative Agent in writing that (x) states that an Event of Default has occurred and is continuing and (y) is otherwise in accordance with the terms of this Agreement, without any other or further instructions from such Grantor, and each Grantor agrees that each Issuer shall be fully protected in so complying and (ii) following the receipt of the instructions described in clause (i) of this subsection (c), unless otherwise expressly permitted hereby, pay any dividends, distributions or other payments with respect to the Investment Property directly to the Administrative Agent.

6.4 Proceeds to be Turned Over to Administrative Agent. In addition to the rights of the Administrative Agent and the Lenders specified in Section 6.1 with respect to payments of Receivables, if an Event of Default shall occur and be continuing, all Proceeds received by any Grantor consisting of cash, checks and other cash equivalent items shall be held by such Grantor in trust for the Administrative Agent and the Lenders, segregated from other funds of such Grantor, and shall, forthwith upon receipt by such Grantor, be turned over to the Administrative Agent in the exact form received by such Grantor (duly indorsed by such Grantor to the Administrative Agent, if required). All Proceeds received by the Administrative Agent hereunder shall be held by the Administrative Agent in a collateral account maintained under its sole dominion and control. All Proceeds, while held by the Administrative Agent in any collateral account (or by such Grantor in trust for the Administrative Agent and the Lenders) established pursuant hereto, shall continue to be held as collateral security for the Secured Obligations and shall not constitute payment thereof until applied as provided in Section 6.5.

6.5 Application of Proceeds. If an Event of Default shall have occurred and be continuing, the Administrative Agent may elect to apply all or any part of Proceeds from the sale of, or other realization upon, all or any part of the Collateral in payment of the Secured Obligations in such order as the Administrative Agent shall determine in its discretion. Any part of such funds which the Administrative Agent elects not so to apply and deems not required as collateral security for the Secured Obligations shall be paid over from time to time by the Administrative Agent to the applicable Grantor or to whomsoever may be lawfully entitled to receive the same. Any balance of such Proceeds remaining after the Secured Obligations shall have been Paid in Full shall be paid over to the applicable Grantor or to whomsoever may be lawfully entitled to receive the same. In the absence of a specific determination by the

Administrative Agent, the Proceeds from the sale of, or other realization upon, all or any part of the Collateral in payment of the Secured Obligations shall be applied in the following order:

FIRST, to the payment of all fees, costs, expenses and indemnities of the Administrative Agent (in its capacity as such), including Attorney Costs, and any other Secured Obligations owing to the Administrative Agent in respect of sums advanced by the Administrative Agent to preserve the Collateral or to preserve its security interest in the Collateral, until paid in full;

SECOND, to the payment of all fees, costs, expenses and indemnities of the Lenders, pro-rata, until paid in full;

THIRD, to the payment of all of the Secured Obligations in respect of the Swing Line Loans to the Swing Line Lender, until paid in full;

FOURTH, to the payment of all of the Secured Obligations (other than Bank Product Obligations and Hedging Obligations) consisting of accrued and unpaid interest owing to any Lender, pro-rata, until paid in full;

FIFTH, to the payment of all Secured Obligations (other than Bank Product Obligations and Hedging Obligations) consisting of principal owing to any Lender, pro-rata, until paid in full;

SIXTH, to the payment of the Administrative Agent an amount equal to all Secured Obligations in respect of outstanding Letters of Credit to be held as cash collateral in respect of such obligations;

SEVENTH, to the payment of all Bank Products Obligations and Hedging Obligations owing to any Lender or its Affiliates, pro-rata, until paid in full;

EIGHTH, to the payment of all other Secured Obligations owing to each Lender, pro-rata, until paid in full; and

NINTH, to the payment of any remaining Proceeds, if any, to whomever may be lawfully entitled to receive such amounts.

6.6 Code and Other Remedies. If an Event of Default shall occur and be continuing, the Administrative Agent, on behalf of the Lenders, may exercise, in addition to all other rights and remedies granted to them in this Agreement and in any other instrument or agreement securing, evidencing or relating to the Secured Obligations, all rights and remedies of a secured party under the UCC or any other applicable law. Without limiting the generality of the foregoing, the Administrative Agent, without demand of performance or other demand, presentment, protest, advertisement or notice of any kind (except any notice required by law referred to below) to or upon any Grantor or any other Person (all and each of which demands, defenses, advertisements and notices are hereby waived), may in such circumstances forthwith collect, receive, appropriate and realize upon the Collateral, or any part thereof, and/or may forthwith sell, lease, assign, give options to purchase, or otherwise dispose of and deliver the

Collateral or any part thereof (or contract to do any of the foregoing), in one or more parcels at public or private sale or sales, at any exchange, broker's board or office of the Administrative Agent or any Lender or elsewhere upon such terms and conditions as it may deem advisable and at such prices as it may deem best, for cash or on credit or for future delivery with assumption of any credit risk. The Administrative Agent or any Lender shall have the right upon any such public sale or sales, and, to the extent permitted by law, upon any such private sale or sales, to purchase the whole or any part of the Collateral so sold, free of any right or equity of redemption in any Grantor, which right or equity is hereby waived and released. Each Grantor further agrees, at the Administrative Agent's request, to assemble the Collateral and make it available to the Administrative Agent at places which the Administrative Agent shall reasonably select, whether at such Grantor's premises or elsewhere. The Administrative Agent shall apply the net proceeds of any action taken by it pursuant to this Section 6.6, after deducting all reasonable costs and expenses of every kind incurred in connection therewith or incidental to the care or safekeeping of any of the Collateral or in any way relating to the Collateral or the rights of the Administrative Agent and the Lenders hereunder, including Attorney Costs to the payment in whole or in part of the Secured Obligations, in such order as the Administrative Agent may elect, and only after such application and after the payment by the Administrative Agent of any other amount required by any provision of law, need the Administrative Agent account for the surplus, if any, to any Grantor. To the extent permitted by applicable law, each Grantor waives all claims, damages and demands it may acquire against the Administrative Agent or any Lender arising out of the exercise by them of any rights hereunder. If any notice of a proposed sale or other disposition of Collateral shall be required by law, such notice shall be deemed reasonable and proper if given at least 10 days before such sale or other disposition.

6.7 Registration Rights. (a) Following the occurrence and during the continuation of an Event of Default, if the Administrative Agent shall determine to exercise its right to sell any or all of the Pledged Equity pursuant to Section 6.6, and if in the opinion of the Administrative Agent it is necessary or advisable to have the Pledged Equity, or that portion thereof to be sold, registered under the provisions of the Securities Act, the relevant Grantor will cause the Issuer thereof to (i) execute and deliver, and cause the directors and officers of such Issuer to execute and deliver, all such instruments and documents, and do or cause to be done all such other acts as may be, in the opinion of the Administrative Agent, necessary or advisable to register the Pledged Equity, or that portion thereof to be sold, under the provisions of the Securities Act, (ii) use its best efforts to cause the registration statement relating thereto to become effective and to remain effective for a period of one year from the date of the first public offering of the Pledged Equity, or that portion thereof to be sold, and (iii) make all amendments thereto and/or to the related prospectus which, in the opinion of the Administrative Agent, are necessary or advisable, all in conformity with the requirements of the Securities Act and the rules and regulations of the Securities and Exchange Commission applicable thereto. Each Grantor agrees to cause such Issuer to comply with the provisions of the securities or "Blue Sky" laws of any and all jurisdictions which the Administrative Agent shall designate and to make available to its security holders, as soon as practicable, an earnings statement (which need not be audited) which will satisfy the provisions of Section 11(a) of the Securities Act.

(b) Each Grantor recognizes that the Administrative Agent may be unable to effect a public sale of any or all the Pledged Equity, by reason of certain prohibitions contained

in the Securities Act and applicable state securities laws or otherwise, and may be compelled to resort to one or more private sales thereof to a restricted group of purchasers which will be obliged to agree, among other things, to acquire such securities for their own account for investment and not with a view to the distribution or resale thereof. Each Grantor acknowledges and agrees that any such private sale may result in prices and other terms less favorable than if such sale were a public sale and, notwithstanding such circumstances, agrees that any such private sale shall be deemed to have been made in a commercially reasonable manner. The Administrative Agent shall be under no obligation to delay a sale of any of the Pledged Equity for the period of time necessary to permit the Issuer thereof to register such securities or other interests for public sale under the Securities Act, or under applicable state securities laws, even if such Issuer would agree to do so.

(c) Each Grantor agrees to use its best efforts to do or cause to be done all such other acts as may be necessary to make such sale or sales of all or any portion of the Pledged Equity pursuant to this Section 6.7 valid and binding and in compliance with applicable law. Each Grantor further agrees that a breach of any of the covenants contained in this Section 6.7 will cause irreparable injury to the Administrative Agent and the Lenders, that the Administrative Agent and the Lenders have no adequate remedy at law in respect of such breach and, as a consequence, that each and every covenant contained in this Section 6.7 shall be specifically enforceable against such Grantor, and such Grantor hereby waives and agrees not to assert any defenses against an action for specific performance of such covenants except for a defense that no Event of Default has occurred under the Credit Agreement.

6.8 Waiver; Deficiency. Each Grantor waives and agrees not to assert any rights or privileges which it may acquire under Section 9-626 of the UCC. Each Grantor shall remain liable for any deficiency if the proceeds of any sale or other disposition of the Collateral are insufficient to pay the Secured Obligations in full and the fees and disbursements of any attorneys employed by the Administrative Agent or any Lender to collect such deficiency.

## SECTION 7 THE ADMINISTRATIVE AGENT.

7.1 Administrative Agent's Appointment as Attorney-in-Fact, etc. (a) Each Grantor hereby irrevocably constitutes and appoints the Administrative Agent and any officer or agent thereof, with full power of substitution, as its true and lawful attorney-in-fact with full irrevocable power and authority in the place and stead of such Grantor and in the name of such Grantor or in its own name, for the purpose of carrying out the terms of this Agreement, to take any and all appropriate action and to execute any and all documents and instruments which may be necessary or desirable to accomplish the purposes of this Agreement, and, without limiting the generality of the foregoing, each Grantor hereby gives the Administrative Agent the power and right, on behalf of and at the expense of such Grantor, without notice to or assent by such Grantor, to do any or all of the following:

(i) in the name of such Grantor or its own name, or otherwise, take possession of and indorse and collect any checks, drafts, notes, acceptances or other instruments for the payment of moneys due under any Receivable or with respect to any other Collateral and file any claim or take any other action or proceeding in any court of law or equity or otherwise deemed appropriate by the Administrative Agent for the

purpose of collecting any and all such moneys due under any Receivable or with respect to any other Collateral whenever payable;

(ii) in the case of any Intellectual Property, execute and deliver, and have recorded, any and all agreements, instruments, documents and papers as the Administrative Agent may request to evidence the Administrative Agent's security interest in such Intellectual Property and the goodwill and general intangibles of such Grantor relating thereto or represented thereby;

(iii) discharge Liens levied or placed on or threatened against the Collateral, and effect any repairs or insurance called for by the terms of this Agreement and pay all or any part of the premiums therefor and the costs thereof;

(iv) execute, in connection with any sale provided for in Section 6.6 or 6.7, any indorsements, assignments or other instruments of conveyance or transfer with respect to the Collateral; and

(v) (1) direct any party liable for any payment under any of the Collateral to make payment of any and all moneys due or to become due thereunder directly to the Administrative Agent or as the Administrative Agent shall direct; (2) ask or demand for, collect, and receive payment of and receipt for, any and all moneys, claims and other amounts due or to become due at any time in respect of or arising out of any Collateral; (3) sign and indorse any invoices, freight or express bills, bills of lading, storage or warehouse receipts, drafts against debtors, assignments, verifications, notices and other documents in connection with any of the Collateral; (4) commence and prosecute any suits, actions or proceedings at law or in equity in any court of competent jurisdiction to collect the Collateral or any portion thereof and to enforce any other right in respect of any Collateral; (5) defend any suit, action or proceeding brought against such Grantor with respect to any Collateral; (6) settle, compromise or adjust any such suit, action or proceeding and, in connection therewith, give such discharges or releases as the Administrative Agent may deem appropriate; (7) assign any Copyright, Patent or Trademark, throughout the world for such term or terms, on such conditions, and in such manner, as the Administrative Agent shall in its sole discretion determine; (8) vote any right or interest with respect to any Investment Property; (9) order good standing certificates and conduct lien searches in respect of such jurisdictions or offices as the Administrative Agent may deem appropriate; and (10) generally sell, transfer, pledge and make any agreement with respect to or otherwise deal with any of the Collateral as fully and completely as though the Administrative Agent were the absolute owner thereof for all purposes, and do, at the Administrative Agent's option and such Grantor's expense, at any time, or from time to time, all acts and things which the Administrative Agent deems necessary to protect, preserve or realize upon the Collateral and the Administrative Agent's security interests therein and to effect the intent of this Agreement, all as fully and effectively as such Grantor might do.

Anything in this Section 7.1(a) to the contrary notwithstanding, the Administrative Agent agrees that it will not exercise any rights under the power of attorney provided for in this Section 7.1(a) unless an Event of Default shall have occurred and be continuing.



(b) If any Grantor fails to perform or comply with any of its agreements contained herein, the Administrative Agent, at its option, but without any obligation so to do, may perform or comply, or otherwise cause performance or compliance, with such agreement.

(c) Each Grantor hereby ratifies all that such attorneys shall lawfully do or cause to be done by virtue hereof. All powers, authorizations and agencies contained in this Agreement are coupled with an interest and are irrevocable until this Agreement is terminated and the security interests created hereby are released.

7.2 Duty of Administrative Agent. The Administrative Agent's sole duty with respect to the custody, safekeeping and physical preservation of the Collateral in its possession shall be to deal with it in the same manner as the Administrative Agent deals with similar property for its own account. Neither the Administrative Agent or any Lender nor any of their respective officers, directors, employees or agents shall be liable for any failure to demand, collect or realize upon any of the Collateral or for any delay in doing so or shall be under any obligation to sell or otherwise dispose of any Collateral upon the request of any Grantor or any other Person or to take any other action whatsoever with regard to the Collateral or any part thereof. The powers conferred on the Administrative Agent and the Lenders hereunder are solely to protect the Administrative Agent's and the Lenders' interests in the Collateral and shall not impose any duty upon the Administrative Agent or any Lender to exercise any such powers. The Administrative Agent and the Lenders shall be accountable only for amounts that they actually receive as a result of the exercise of such powers, and neither they nor any of their officers, directors, employees or agents shall be responsible to any Grantor for any act or failure to act hereunder.

7.3 Authority of Administrative Agent. Each Grantor acknowledges that the rights and responsibilities of the Administrative Agent under this Agreement with respect to any action taken by the Administrative Agent or the exercise or non-exercise by the Administrative Agent of any option, voting right, request, judgment or other right or remedy provided for herein or resulting or arising out of this Agreement shall, as between the Administrative Agent and the Lenders, be governed by the Credit Agreement and by such other agreements with respect thereto as may exist from time to time among them, but, as between the Administrative Agent and the Grantors, the Administrative Agent shall be conclusively presumed to be acting as agent for the Lenders with full and valid authority so to act or refrain from acting, and no Grantor shall be under any obligation, or entitlement, to make any inquiry respecting such authority.

## SECTION 8 MISCELLANEOUS.

8.1 Amendments in Writing. None of the terms or provisions of this Agreement may be waived, amended, supplemented or otherwise modified except in accordance with Section 15.2 of the Credit Agreement.

8.2 Notices. All notices, requests and demands to or upon the Administrative Agent or any Grantor hereunder shall be addressed to the Co-Borrowers and effected in the manner provided for in Section 15.4 of the Credit Agreement and each Grantor hereby appoints the Co-Borrowers as its agent to receive notices hereunder.

8.3 Indemnification by Grantors. THE GRANTORS, JOINTLY AND SEVERALLY, HEREBY AGREE TO INDEMNIFY, EXONERATE AND HOLD EACH LENDER PARTY FREE AND HARMLESS FROM AND AGAINST ANY AND ALL INDEMNIFIED LIABILITIES, INCURRED BY THE LENDER PARTIES OR ANY OF THEM AS A RESULT OF, OR ARISING OUT OF, OR RELATING TO (A) ANY TENDER OFFER, MERGER, PURCHASE OF EQUITY INTERESTS, PURCHASE OF ASSETS OR OTHER SIMILAR TRANSACTION FINANCED OR PROPOSED TO BE FINANCED IN WHOLE OR IN PART, DIRECTLY OR INDIRECTLY, WITH THE PROCEEDS OF ANY OF THE LOANS, (B) THE USE, HANDLING, RELEASE, EMISSION, DISCHARGE, TRANSPORTATION, STORAGE, TREATMENT OR DISPOSAL OF ANY HAZARDOUS SUBSTANCE AT ANY PROPERTY OWNED OR LEASED BY ANY GRANTOR, (C) ANY VIOLATION OF ANY ENVIRONMENTAL LAWS WITH RESPECT TO CONDITIONS AT ANY PROPERTY OWNED OR LEASED BY ANY GRANTOR OR THE OPERATIONS CONDUCTED THEREON, (D) THE INVESTIGATION, CLEANUP OR REMEDIATION OF OFFSITE LOCATIONS AT WHICH ANY LOAN PARTY OR THEIR RESPECTIVE PREDECESSORS ARE ALLEGED TO HAVE DIRECTLY OR INDIRECTLY DISPOSED OF HAZARDOUS SUBSTANCES OR (E) THE EXECUTION, DELIVERY, PERFORMANCE OR ENFORCEMENT OF THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT BY ANY OF THE LENDER PARTIES, EXCEPT FOR ANY SUCH INDEMNIFIED LIABILITIES ARISING ON ACCOUNT OF THE APPLICABLE LENDER PARTY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT AS DETERMINED BY A FINAL, NONAPPEALABLE JUDGMENT BY A COURT OF COMPETENT JURISDICTION. IF AND TO THE EXTENT THAT THE FOREGOING UNDERTAKING MAY BE UNENFORCEABLE FOR ANY REASON, EACH GRANTOR HEREBY AGREES TO MAKE THE MAXIMUM CONTRIBUTION TO THE PAYMENT AND SATISFACTION OF EACH OF THE INDEMNIFIED LIABILITIES WHICH IS PERMISSIBLE UNDER APPLICABLE LAW. ALL OBLIGATIONS PROVIDED FOR IN THIS SECTION 8.3 SHALL SURVIVE REPAYMENT OF ALL (AND SHALL BE) SECURED OBLIGATIONS (AND TERMINATION OF ALL COMMITMENTS UNDER THE CREDIT AGREEMENT), ANY FORECLOSURE UNDER, OR ANY MODIFICATION, RELEASE OR DISCHARGE OF, ANY OR ALL OF THE COLLATERAL DOCUMENTS AND TERMINATION OF THIS AGREEMENT.

8.4 Enforcement Expenses. (a) Each Grantor agrees, on a joint and several basis, to pay or reimburse on demand each Lender and the Administrative Agent for all reasonable out-of-pocket costs and expenses (including Attorney Costs) incurred in collecting against any Guarantor under the guaranty contained in Section 2 or otherwise enforcing or preserving any rights under this Agreement and the other Loan Documents.

(b) Each Grantor agrees to pay, and to save the Administrative Agent and the Lenders harmless from, any and all liabilities with respect to, or resulting from any delay in paying, any and all stamp, excise, sales or other taxes which may be payable or determined to be payable with respect to any of the Collateral or in connection with any of the transactions contemplated by this Agreement.

(c) The agreements in this Section 8.4 shall survive repayment of all (and shall be) Secured Obligations (and termination of all commitments under the Credit Agreement), any foreclosure under, or any modification, release or discharge of, any or all of the Collateral Documents and termination of this Agreement.

8.5 Captions. Section captions used in this Agreement are for convenience only and shall not affect the construction of this Agreement.

8.6 Nature of Remedies. All Secured Obligations of each Grantor and rights of the Administrative Agent and the Lenders expressed herein or in any other Loan Document shall be in addition to and not in limitation of those provided by applicable law. No failure to exercise and no delay in exercising, on the part of the Administrative Agent or any Lender, any right, remedy, power or privilege hereunder, shall operate as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

8.7 Counterparts. This Agreement may be executed in any number of counterparts and by the different parties hereto on separate counterparts and each such counterpart shall be deemed to be an original, but all such counterparts shall together constitute but one and the same Agreement. Receipt by telecopy of any executed signature page to this Agreement or any other Loan Document shall constitute effective delivery of such signature page.

8.8 Severability. The illegality or unenforceability of any provision of this Agreement or any instrument or agreement required hereunder shall not in any way affect or impair the legality or enforceability of the remaining provisions of this Agreement or any instrument or agreement required hereunder.

8.9 Entire Agreement. This Agreement, together with the other Loan Documents, embodies the entire agreement and understanding among the parties hereto and supersedes all prior or contemporaneous agreements and understandings of such Persons, verbal or written, relating to the subject matter hereof and thereof and any prior arrangements made with respect to the payment by any Grantor of (or any indemnification for) any fees, costs or expenses payable to or incurred (or to be incurred) by or on behalf of the Administrative Agent or the Lenders.

8.10 Successors; Assigns. This Agreement shall be binding upon Grantors, the Lenders and the Administrative Agent and their respective successors and assigns, and shall inure to the benefit of Grantors, Lenders and the Administrative Agent and the successors and assigns of the Lenders and the Administrative Agent. No other Person shall be a direct or indirect legal beneficiary of, or have any direct or indirect cause of action or claim in connection with, this Agreement or any of the other Loan Documents. No Grantor may assign or transfer any of its rights or Obligations under this Agreement without the prior written consent of the Administrative Agent.

8.11 Governing Law. THIS AGREEMENT SHALL BE A CONTRACT MADE UNDER AND GOVERNED BY THE INTERNAL LAWS OF THE STATE OF

ILLINOIS APPLICABLE TO CONTRACTS MADE AND TO BE PERFORMED ENTIRELY WITHIN SUCH STATE, WITHOUT REGARD TO CONFLICT OF LAWS PRINCIPLES.

8.12 Forum Selection; Consent to Jurisdiction. ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER, OR IN CONNECTION WITH THIS AGREEMENT SHALL BE BROUGHT AND MAINTAINED EXCLUSIVELY IN THE COURTS OF THE STATE OF ILLINOIS OR IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS; PROVIDED THAT NOTHING IN THIS AGREEMENT SHALL BE DEEMED OR OPERATE TO PRECLUDE THE ADMINISTRATIVE AGENT FROM BRINGING SUIT OR TAKING OTHER LEGAL ACTION IN ANY OTHER JURISDICTION. EACH GRANTOR HEREBY EXPRESSLY AND IRREVOCABLY SUBMITS TO THE JURISDICTION OF THE COURTS OF THE STATE OF ILLINOIS AND OF THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS FOR THE PURPOSE OF ANY SUCH LITIGATION AS SET FORTH ABOVE. EACH GRANTOR FURTHER IRREVOCABLY CONSENTS TO THE SERVICE OF PROCESS BY REGISTERED MAIL, POSTAGE PREPAID, OR BY PERSONAL SERVICE WITHIN OR WITHOUT THE STATE OF ILLINOIS. EACH GRANTOR HEREBY EXPRESSLY AND IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY OBJECTION WHICH IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY SUCH LITIGATION BROUGHT IN ANY SUCH COURT REFERRED TO ABOVE AND ANY CLAIM THAT ANY SUCH LITIGATION HAS BEEN BROUGHT IN AN INCONVENIENT FORUM.

8.13 Waiver of Jury Trial. EACH GRANTOR, THE ADMINISTRATIVE AGENT AND EACH LENDER HEREBY WAIVES ANY RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING TO ENFORCE OR DEFEND ANY RIGHTS UNDER THIS AGREEMENT AND ANY AMENDMENT, INSTRUMENT, DOCUMENT OR AGREEMENT DELIVERED OR WHICH MAY IN THE FUTURE BE DELIVERED IN CONNECTION HERewith AND AGREES THAT ANY SUCH ACTION OR PROCEEDING SHALL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY.

8.14 Set-off. Each Grantor agrees that the Administrative Agent and each Lender have all rights of set-off and bankers' lien provided by applicable law, and in addition thereto, each Grantor agrees that at any time any Event of Default exists, the Administrative Agent and each Lender may apply to the payment of any Secured Obligations, whether or not then due, any and all balances, credits, deposits, accounts or moneys of such Grantor then or thereafter with the Administrative Agent or such Lender.

8.15 Acknowledgements. Each Grantor hereby acknowledges that:

(a) it has been advised by counsel in the negotiation, execution and delivery of this Agreement and the other Loan Documents to which it is a party;

(b) neither the Administrative Agent nor any Lender has any fiduciary relationship with or duty to any Grantor arising out of or in connection with this Agreement or any of the other Loan Documents, and the relationship between the

Grantors, on the one hand, and the Administrative Agent and the Lenders, on the other hand, in connection herewith or therewith is solely that of debtor and creditor; and

(c) no joint venture is created hereby or by the other Loan Documents or otherwise exists by virtue of the transactions contemplated hereby among the Lenders or among the Grantors and the Lenders.

8.16 Additional Grantors. Each Loan Party that is required to become a party to this Agreement pursuant to Section 10.10 of the Credit Agreement shall become a Grantor for all purposes of this Agreement upon execution and delivery by such Loan Party of a joinder agreement in the form of Annex I hereto.

8.17 Releases. (a) At such time as the Secured Obligations have been Paid in Full, the Collateral shall be released from the Liens created hereby, and this Agreement and all obligations (other than those expressly stated to survive such termination) of the Administrative Agent and each Grantor hereunder shall terminate, all without delivery of any instrument or performance of any act by any party, and all rights to the Collateral shall revert to the Grantors. At the request and sole expense of any Grantor following any such termination, the Administrative Agent shall deliver to the Grantors any Collateral held by the Administrative Agent hereunder, and execute and deliver to the Grantors such documents as the Grantors shall reasonably request to evidence such termination.

(b) If any of the Collateral shall be sold, transferred or otherwise disposed of by any Grantor in a transaction permitted by the Credit Agreement, then the Administrative Agent, at the request and sole expense of such Grantor, shall execute and deliver to such Grantor all releases or other documents reasonably necessary or desirable for the release of the Liens created hereby on such Collateral. At the request and sole expense of the Co-Borrowers, a Guarantor shall be released from its obligations hereunder in the event that all the equity interests of such Guarantor shall be sold, transferred or otherwise disposed of in a transaction permitted by the Credit Agreement; provided that the Co-Borrowers shall have delivered to the Administrative Agent, with reasonable notice prior to the date of the proposed release, a written request for release identifying the relevant Guarantor and the terms of the sale or other disposition in reasonable detail, including the price thereof and any expenses in connection therewith, together with a certification by the Co-Borrowers stating that such transaction is in compliance with the Credit Agreement and the other Loan Documents

(c) Notwithstanding the provisions of Section 8.17(a) and (b), the Administrative Agent agrees that the Lien created hereby in any Rolling Stock shall be automatically released as described in Section 9-320 of the UCC upon sale by the Co-Borrowers of such Rolling Stock to a buyer in the ordinary course of business; provided, however, the Lien of the Administrative Agent shall attach to the proceeds of such sale; and provided, further, that the foregoing shall not affect the Lien of the Administrative Agent in any security interest of the Co-Borrowers in the property of such buyers to the extent that such security interest secures the purchase price for such property. Subject to the terms of this Section 8.17(c), if the Co-Borrowers shall request in writing that the Administrative Agent evidence the release referred to in this Section 8.17(c) with respect to specific railroad cars, the Administrative Agent shall promptly execute and deliver a partial release with respect to such railroad cars substantially in

the form of Annex II to this Agreement. In the event that any Loan Party is granted a security interest in any Rolling Stock or other property as collateral security for the purchase price of such Rolling Stock or other property, such Loan Party agrees that it shall execute and deliver all documents requested by the Administrative Agent in order to reflect and perfect the collateral assignment of the foregoing security interest of the Loan Party to the Administrative Agent.

8.18 Obligations and Liens Absolute and Unconditional. Each Grantor understands and agrees that the obligations of each Grantor under this Agreement shall be construed as a continuing, absolute and unconditional without regard to (a) the validity or enforceability of any Loan Document, any of the Secured Obligations or any other collateral security therefor or guaranty or right of offset with respect thereto at any time or from time to time held by the Administrative Agent or any Lender, (b) any defense, set-off or counterclaim (other than a defense of payment or performance) which may at any time be available to or be asserted by any Grantor or any other Person against the Administrative Agent or any Lender, or (c) any other circumstance whatsoever (with or without notice to or knowledge of any Grantor) which constitutes, or might be construed to constitute, an equitable or legal discharge of any Grantor for the Secured Obligations, in bankruptcy or in any other instance. When making any demand hereunder or otherwise pursuing its rights and remedies hereunder against any Grantor, the Administrative Agent or any Lender may, but shall be under no obligation to, make a similar demand on or otherwise pursue such rights and remedies as it may have against any other Grantor or any other Person or against any collateral security or guaranty for the Secured Obligations or any right of offset with respect thereto, and any failure by the Administrative Agent or any Lender to make any such demand, to pursue such other rights or remedies or to collect any payments from any other Grantor or any other Person or to realize upon any such collateral security or guaranty or to exercise any such right of offset, or any release of any other Grantor or any other Person or any such collateral security, guaranty or right of offset, shall not relieve any Grantor of any obligation or liability hereunder, and shall not impair or affect the rights and remedies, whether express, implied or available as a matter of law, of the Administrative Agent or any Lender against any Grantor. For the purposes hereof "demand" shall include the commencement and continuance of any legal proceedings.

8.19 Reinstatement. This Agreement shall remain in full force and effect and continue to be effective should any petition be filed by or against Grantor or any Issuer for liquidation or reorganization, should Grantor or any Issuer become insolvent or make an assignment for the benefit of creditors or should a receiver or trustee be appointed for all or any significant part of Grantor's or and Issuer's assets, and shall continue to be effective or be reinstated, as the case may be, if at any time payment and performance of the Secured Obligations, or any part thereof, is, pursuant to applicable law, rescinded or reduced in amount, or must otherwise be restored or returned by any obligee of the Secured Obligations, whether as a "voidable preference", "fraudulent conveyance", or otherwise, all as though such payment or performance had not been made. In the event that any payment, or any part thereof, is rescinded, reduced, restored or returned, the Secured Obligations shall be reinstated and deemed reduced only by such amount paid and not so rescinded, reduced, restored or returned.

8.20 Amendment and Restatement. This Agreement constitutes an amendment to, and a complete restatement of, the Co-Borrower Security Agreement, the Patent and

Trademark Security Agreement, the JAC Collateral Pledge Agreement, the JAC Operations Collateral Pledge Agreement, the JAC Holdings Guaranty, the JAC Intermedco Guaranty and the JAC Patent Guaranty.

Each of the undersigned has caused this Guaranty and Collateral Agreement to be duly executed and delivered as of the date first above written.

**FREIGHT CAR SERVICES, INC.,  
FREIGHTCAR ROANOKE, INC.,  
JAC OPERATIONS, INC.,  
JAIX LEASING COMPANY and  
JOHNSTOWN AMERICA CORPORATION,  
each as a Co-Borrower and Grantor**

By Kevin P. Bagby  
Name: Kevin P. Bagby  
Title: Vice President, Finance, Chief  
Financial Officer, Treasurer and  
Secretary

**FREIGHTCAR AMERICA, INC., JAC  
INTERMEDCO, INC., and JAC PATENT  
COMPANY, each as a Grantor and Guarantor**

By Kevin P. Bagby  
Name: Kevin P. Bagby  
Title: Vice President, Finance, Chief  
Financial Officer, Treasurer and  
Secretary

*(Signature Page to Guaranty and Collateral Agreement)*



### Corporate Form of Acknowledgement

I, Kevin P. Bagby, certify that I am the Vice President, Finance, Chief Financial Officer, Treasurer and Secretary of Johnstown America Corporation, Freight Car Services, Inc., JAC Operations, Inc., JAIX Leasing Company, FreightCar Roanoke, Inc., JAC Patent Company, FreightCar America, Inc. and JAC Intermedco, Inc., that the foregoing instrument was signed and sealed on behalf of the corporations by authority of their Boards of Directors, and that I acknowledge that the execution of the foregoing instrument was the free act and deed of the corporations. I further declare under penalty of perjury that the foregoing is true and correct. Executed on April 11, 2005.

Signature: Kevin P. Bagby

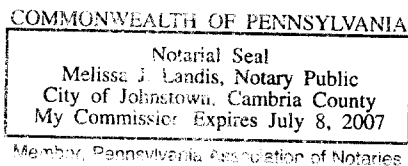
### Acknowledgement

State of Pennsylvania )  
County of Cambria ) ss.

On this 11th day of April, 2005, before me personally appeared Kevin P. Bagby, to me personally known, who being by me duly sworn, says that he is the Vice President, Finance, Chief Financial Officer, Treasurer and Secretary of Johnstown America Corporation, Freight Car Services, Inc., JAC Operations, Inc., JAIX Leasing Company, FreightCar Roanoke, Inc., JAC Patent Company, FreightCar America, Inc. and JAC Intermedco, Inc., that said instrument was signed on behalf of said corporations by authority of their Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

(SEAL)

Melissa J. Landis  
Signature of Notary Public



My Commission expires: 07-08-07

(Acknowledgement to Guaranty and Collateral Agreement)

**LASALLE BANK NATIONAL  
ASSOCIATION, as Administrative Agent**

By Robert W. Hart  
Name: Robert W. Hart  
Title: Senior Vice President

I, Robert W. Hart, certify that I am a Senior Vice President of LaSalle Bank National Association, that the foregoing instrument was signed and sealed on behalf of the corporations by authority of their Boards of Directors, and that I acknowledge that the execution of the foregoing instrument was the free act and deed of the corporations. I further declare under penalty of perjury that the foregoing is true and correct. Executed on April 11, 2005.

Signature: Robert W. Hart

**Acknowledgement**

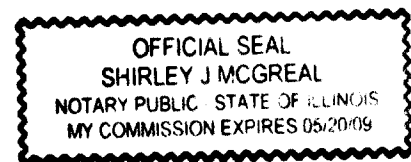
State of ILLINOIS )  
County of COOK ) ss.

On this 5th day of May, 2005, before me personally appeared Robert W. Hart, to me personally known, who being by me duly sworn, says that he is a Senior Vice President of LaSalle Bank National Association, a national association, that said instrument was signed on behalf of said national association by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said national association.

(SEAL)

Shirley J. McGreal  
Signature of Notary Public

My Commission expires: 05.20.09



*(Acknowledgement to Guaranty and Collateral Agreement)*

**SCHEDULE 4.2**  
**FILINGS AND PERFECTION**

<b>GRANTOR</b>	<b>FILING REQUIREMENT OR OTHER ACTION</b>	<b>FILING OFFICE</b>
<b>Johnstown America Corporation</b>	<b>UCC-1 All Assets</b>	<b>DE SOS #51109470, Amendment #51109637</b>
<b>Freight Car Services, Inc.</b>	<b>UCC-1 All Assets</b>	<b>DE SOS #51109736</b>
<b>JAC Operations</b>	<b>UCC-1 All Assets</b>	<b>DE SOS #51109835</b>
<b>JAIX Leasing Company</b>	<b>UCC-1 All Assets</b>	<b>DE SOS #51109918, Amendment #51110007</b>
<b>FreightCar Roanoke, Inc.</b>	<b>UCC-1 All Assets</b>	<b>DE SOS #51110064</b>
<b>FreightCar America, Inc.</b>	<b>UCC-1 All Assets</b>	<b>DE SOS #51110130</b>
<b>JAC Intermedco, Inc.</b>	<b>UCC-1 All Assets</b>	<b>DE SOS #51110197</b>
<b>JAC Patent Company</b>	<b>UCC-1 All Assets</b>	<b>DE SOS #51110239, Amendment #51110312</b>
<b>Johnstown America Corporation</b>	<b>UCC-3 Assignment</b>	<b>DE SOS #32406364; Amendment #51110353</b>
<b>Johnstown America Corporation</b>	<b>UCC-3 Assignment</b>	<b>DE SOS #32406398; Amendment #51110403</b>
<b>Freight Car Services, Inc.</b>	<b>UCC-3 Assignment</b>	<b>DE SOS #32406448; Amendment #51149104</b>
<b>JAC Operations</b>	<b>UCC-3 Assignment</b>	<b>DE SOS #32406414; Amendment #51110429</b>
<b>JAC Operations</b>	<b>UCC-3 Assignment</b>	<b>DE SOS #32406422; Amendment #51148973</b>
<b>JAIX Leasing Company</b>	<b>UCC-3 Assignment</b>	<b>DE SOS #32406463; Amendment 51149302</b>

<b>FreightCar America, Inc.</b>	<b>UCC-3 Assignment</b>	<b>DE SOS #32406455; Amendment #51149211</b>
<b>JAC Intermedco, Inc.</b>	<b>UCC-3 Assignment</b>	<b>DE SOS #32406471; Amendment #51149781</b>

SCHEDULE 4.3

GRANTOR INFORMATION

<u>Grantor</u>	<u>State of Organization</u>	<u>Chief Executive Office</u>	<u>FEIN</u>	<u>Organizational ID Number</u>
Johnstown America Corporation	Delaware	17 Johns Street Johnstown, PA 15901	36- 3769515	2261570
Freight Car Services, Inc.	Delaware	17 Johns Street Johnstown, PA 15901	36- 3990959	2452856
JAC Operations, Inc.	Delaware	17 Johns Street Johnstown, PA 15901	25- 1837221	3044463
JAIX Leasing Company	Delaware	17 Johns Street Johnstown, PA 15901	36- 4026220	2467934
FreightCar Roanoke, Inc.	Delaware	17 Johns Street Johnstown, PA 15901	20- 2149223	3862144
JAC Patent Company	Delaware	17 Johns Street Johnstown, PA 15901	51- 0345050	2317289
FreightCar America, Inc.	Delaware	17 Johns Street Johnstown, PA 15901	25- 1837219	3035779
JAC Intermedco, Inc.	Delaware	17 Johns Street Johnstown, PA 15901	25- 1837222	3049541

## SCHEDULE 4.4

### COLLATERAL LOCATIONS

#### **Johnstown America Corporation**

- A. Place of Business
  - 1. 17 Johns Street, Johnstown, Pennsylvania 15901; Owned
- B. Location of Inventory and Equipment; Owned/ Leased; Address of Landlord
  - 1. 17 Johns Street, Johnstown, Pennsylvania 15901; Owned
  - 2. Route 403 South (Shell Plant), Johnstown, Pennsylvania 15906; Owned
  - 3. Franklin Assembly Plant and Fab Shop, River Avenue, Franklin Borough, Johnstown, Pennsylvania 15907; Owned
  - 4. Woodvale Warehouse, 300 Maple Avenue, Johnstown, PA 15901, Johnstown Pennsylvania; Owned
  - 5. 312 Greystone Lane, Johnstown, PA 15905; owned

#### **FreightCar Services, Inc.**

- A. Place of Business
  - 1. 17 Johns Street, Johnstown, Pennsylvania 15901; Owned
- B. Location of Inventory and Equipment; Owned/ Leased; Address of Landlord
  - 1. 2313 Cannon Street, Danville, Illinois 61832; Owned

#### **JAC Operations, Inc.**

- A. Place of Business
  - 1. 17 Johns Street, Johnstown, Pennsylvania 15901; Owned
- B. Location of Inventory and Equipment; Owned/ Leased; Address of Landlord
  - 1. Richland Warehouse and Tech Center, 129 Industrial Park Road, Richland Township, Cambria County, Pennsylvania; Lessor: JFY Toledo Properties, Inc. (d/b/a The Basic Building), 4510 Lint Avenue, Toledo, Ohio 43612
  - 2. Bar Tech, Franklin Warehouse D, River Road, Johnstown, PA; Lessor: Bar Technologies, Inc., 5700 Lombardo Center Drive, Suite 100, Seven Hill, OH 44131-2545
  - 3. Storage, 80 Clinton Street, Johnstown, PA 15901; Lessor: Gautier Steel, Ltd., 80 Clinton Street, Johnstown, PA 15901

#### **JAIX Leasing Company**

- A. Place of Business
  - 1. 17 Johns Street, Johnstown, Pennsylvania 15901; Owned
  - 2. Two North Riverside Plaza, Suite 1250, Chicago, Illinois 60606; Leased; Two Joint Venture Limited Partnership, c/o Equity Office Properties, Two North Riverside Plaza, Suite 1430, Chicago, Illinois 60606
- B. Location of Inventory and Equipment; Owned/ Leased; Address of Landlord--none

#### **FreightCar Roanoke, Inc.**

- C. Place of Business

1. 17 Johns Street, Johnstown, Pennsylvania 15901; Owned
2. PO Box 13647, Roanoke, Virginia 24036; Lessor: Norfolk Southern Railway Company, c/o Director Real Estate, Norfolk Southern Corporation, 1200 Peachtree Street, NE, 12th Floor, Atlanta, Georgia 30309
3. 830 Cambell Ave., SE, Roanoke, VA 24013, City Parcel No. 3015010; Norfolk Southern Railway Company, c/o Director Real Estate, Norfolk Southern Corporation, 1200

**JAC Patent Company**

- A. Place of Business
1. 17 Johns Street, Johnstown, Pennsylvania 15901; Owned
  2. 103 Springer Building, 3411 Silverside Road, Wilmington, DE 19801; owned
- B. Location of Inventory and Equipment; Owned/ Leased; Address of Landlord--none

**FreightCar America, Inc.**

- A. Place of Business
1. 17 Johns Street, Johnstown, Pennsylvania 15901; Owned
  2. Two North Riverside Plaza, Suite 1250, Chicago, Illinois 60606; Leased; Two Joint Venture Limited Partnership, c/o Equity Office Properties, Two North Riverside Plaza, Suite 1430, Chicago, Illinois 60606
- B. Location of Inventory and Equipment; Owned/ Leased; Address of Landlord--none

**JAC Intermedco, Inc.**

- A. Place of Business
1. 17 Johns Street, Johnstown, Pennsylvania 15901; Owned
  2. Two North Riverside Plaza, Suite 1250, Chicago, Illinois 60606; Leased; Two Joint Venture Limited Partnership, c/o Equity Office Properties, Two North Riverside Plaza, Suite 1430, Chicago, Illinois 60606
- B. Location of Inventory and Equipment; Owned/ Leased; Address of Landlord--none

SCHEDULE 4.6

INVESTMENT PROPERTY

**A. PLEDGED EQUITY**

<b>Grantor (owner of Record of such Pledged Equity)</b>	<b>Issuer</b>	<b>Pledged Equity Description</b>	<b>Percentage of Issuer</b>	<b>Certificate (Indicate No.)</b>
Johnstown America Corporation	JAC Patent Company	common stock	100%	
JAC Operations, Inc.	Johnstown America Corporation	common stock	100%	
JAC Operations, Inc.	FreightCar Roanoke, Inc.	common stock	100%	
JAC Operations, Inc.	JAIX Leasing Company	common stock	100%	
JAC Operations, Inc.	Freight Car Services, Inc.	common stock	100%	
JAC Intermedco, Inc.	JAC Operations, Inc.	common stock	100%	
FreightCar America, Inc.	JAC Intermedco, Inc.	common stock	100%	



SCHEDULE 4.8

INTELLECTUAL PROPERTY

**Patents**

All those patents listed on the attached amortization schedule.

**Trademarks**

**REGISTRATIONS**

Country	Description	Filed	Application Number	Registration Number
Canada	Trademark - "BethGon Coalporter"	7/26/93	733,822	440,527
Canada	Trademark - "Coalporter"	7/26/93	733,814	440,526
Canada	Trademark - "Johnstown America"	2/2/93	721,859	463,111
Canada	Trademark - "BethGon"	7/26/93	733,792	442,306
US	Trademark - "BethGon"	11/25/91	224680	1,798,623

APPLICATIONS

None.

COLLECTIVE MEMBERSHIP MARKS

None.

UNREGISTERED MARKS

None.

SCHEDULE 4.9

ACCOUNTS

*[to come]*

GRANTOR	FINANCIAL INSTITUTION	ACCOUNT NUMBER	CONTACT INFORMATION
JAC Operations, Inc.	LaSalle Bank, N.A.	5800440272	Rosario Del Valle Senior Bank Associate ANB AMRO Plaza 640 W. Madison St. 26th Floor Chicago, IL 60661 ph: (312) 904-2904 fax: (312) 904-9293
Johnstown America Corporation	LaSalle Bank, N.A.	5800440264	Rosario Del Valle Senior Bank Associate ANB AMRO Plaza 640 W. Madison St. 26th Floor Chicago, IL 60661 ph: (312) 904-2904 fax: (312) 904-9293
Johnstown America Corporation	LaSalle Bank, N.A.	5590066451	Rosario Del Valle Senior Bank Associate ANB AMRO Plaza 640 W. Madison St. 26th Floor Chicago, IL 60661 ph: (312) 904-2904 fax: (312) 904-9293
Freight Car Services, Inc.	LaSalle Bank, N.A.	5800440280	Rosario Del Valle Senior Bank Associate ANB AMRO Plaza 640 W. Madison St. 26th Floor Chicago, IL 60661 ph: (312) 904-2904 fax: (312) 904-9293

Freight Car Services, Inc.	LaSalle Bank, N.A.	5590066469	Rosario Del Valle Senior Bank Associate ANB AMRO Plaza 640 W. Madison St. 26th Floor Chicago, IL 60661 ph: (312) 904-2904 fax: (312) 904-9293
FreightCar Roanoke, Inc.	LaSalle Bank, N.A.	5800689720	Rosario Del Valle Senior Bank Associate ANB AMRO Plaza 640 W. Madison St. 26th Floor Chicago, IL 60661 ph: (312) 904-2904 fax: (312) 904-9293
FreightCar Roanoke, Inc.	LaSalle Bank, N.A.	5590083142	Rosario Del Valle Senior Bank Associate ANB AMRO Plaza 640 W. Madison St. 26th Floor Chicago, IL 60661 ph: (312) 904-2904 fax: (312) 904-9293
FreightCar Roanoke, Inc.	BB&T	5235253971	Jennifer Schneiderman 1620 Hershberger Rd Roanoke, VA 24012 ph: (540) 362-5801 fax: (540) 362-1423
JAIX Leasing Company	LaSalle Bank, N.A.	5800440298	Rosario Del Valle Senior Bank Associate ANB AMRO Plaza 640 W. Madison St. 26th Floor Chicago, IL 60661 ph: (312) 904-2904 fax: (312) 904-9293
Johnstown America Corporation	First National Bank	148988	Customer Service 534 Main Street Johnstown, PA 15901 ph: (800) 555-5455

Johnstown America Corporation	First National Bank	1300149726	Customer Service 534 Main Street Johnstown, PA 15901 ph: (800) 555-5455
Johnstown America Corporation	Ameriserve	50797638	Renee Callihan Retail Service Manager P.O. Box 520 216 Franklin Street Johnstown, PA 15907-0520 ph: (814) 533-5135
Freight Car Services, Inc.	Old National Bank	101600645	Jim Anderson 2 W. Main Street Danville, IL 61832 ph: (217) 477-0204
Freight Car Services, Inc.	Old National Bank	101706778	Jim Anderson 2 W. Main Street Danville, IL 61832 ph: (217) 477-0204

SCHEDULE 5.9

COMMERCIAL TORT CLAIMS

None.

## ANNEX I

### FORM OF JOINDER TO GUARANTY AND COLLATERAL AGREEMENT

This JOINDER AGREEMENT (this "Agreement") dated as of [\_\_\_\_], is executed by the undersigned for the benefit of LaSalle Bank National Association, as the Administrative Agent (the "Administrative Agent") in connection with that certain Guaranty and Collateral Agreement dated as of April 11, 2005, among the Grantors party thereto and the Administrative Agent (as amended, restated, supplemented or modified from time to time, the "Guaranty and Collateral Agreement"). Capitalized terms not otherwise defined herein are being used herein as defined in the Guaranty and Collateral Agreement.

Each Person signatory hereto is required to execute this Agreement pursuant to Section 8.16 of the Guaranty and Collateral Agreement.

In consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, each signatory hereby agrees as follows:

1. Each such Person assumes all the obligations of a Grantor [and a Guarantor] under the Guaranty and Collateral Agreement and agrees that such person or entity is a Grantor [and a Guarantor] and bound as a Grantor [and a Guarantor] under the terms of the Guaranty and Collateral Agreement, as if it had been an original signatory to such agreement. In furtherance of the foregoing, such Person hereby assigns, pledges and grants to the Administrative Agent a security interest in all of its right, title and interest in and to the Collateral owned thereby to secure the Secured Obligations.

2. Schedules 4.2, 4.3, 4.4, 4.5, 4.6, 4.8, 4.9 and 5.9 of the Guaranty and Collateral Agreement are hereby amended to add the information relating to each such Person set out on Schedules 4.2, 4.3, 4.4, 4.5, 4.6, 4.8, 4.9 and 5.9 respectively, hereof. Each such Person hereby makes to the Administrative Agent the representations and warranties set forth in the Guaranty and Collateral Agreement applicable to such Person and the applicable Collateral and confirms that such representations and warranties are true and correct after giving effect to such amendment to such Schedules.

3. In furtherance of its obligations under Section 5.2 of the Guaranty and Collateral Agreement, each such Person agrees to deliver to the Administrative Agent appropriately complete UCC financing statements naming such person or entity as debtor and the Administrative Agent as secured party, and describing its Collateral and such other documentation as the Administrative Agent (or its successors or assigns) may require to evidence, protect and perfect the Liens created by the Guaranty and Collateral Agreement, as modified hereby. Each such Person acknowledges the authorizations given to the Administrative Agent under the Section 5.9(b) of the Guaranty and Collateral Agreement and otherwise.

4. Each such Person's address for notices under the Guaranty and Collateral Agreement shall be the address of the Co-Borrowers set forth in the Credit Agreement and each such Person hereby appoints the Co-Borrowers as its agent to receive notices hereunder.

5. This Agreement shall be deemed to be part of, and a modification to, the Guaranty and Collateral Agreement and shall be governed by all the terms and provisions of the Guaranty and Collateral Agreement, with respect to the modifications intended to be made to such agreement, which terms are incorporated herein by reference, are ratified and confirmed and shall continue in full force and effect as valid and binding agreements of each such person or entity enforceable against such person or entity. Each such Person hereby waives notice of the Administrative Agent's acceptance of this Agreement. Each such Person will deliver an executed original of this Agreement to the Administrative Agent.

[add signature block for each new Grantor]

## ANNEX II

### PARTIAL RELEASE OF LIEN

KNOW ALL MEN BY THESE PRESENTS THAT:

WHEREAS, [Co-Borrower], has heretofore executed and delivered the Guaranty and Collateral Agreement dated as of April 11, 2005, as amended and supplemented through the date hereof (the "Guaranty and Collateral Agreement") among **JOHNSTOWN AMERICA CORPORATION**, a Delaware corporation ("JAC"), **FREIGHT CAR SERVICES, INC.**, a Delaware corporation ("Freight Car"), **JAC OPERATIONS, INC.**, a Delaware corporation ("JAC Operations"), **JAIX LEASING COMPANY**, a Delaware corporation ("JAIX Leasing"), and **FREIGHTCAR ROANOKE, INC.**, a Delaware corporation ("Freightcar Roanoke") (each a "Co-Borrower" and a "Grantor", and collectively the "Co-Borrowers"), **JAC PATENT COMPANY**, a Delaware corporation ("JAC Patent" and a "Grantor"), **FREIGHTCAR AMERICA, INC.**, a Delaware corporation, formerly known as FCA Acquisition Corp., successor-by-merger to FreightCar America, Inc., formerly known as JAC Holdings International, Inc. ("Holdings" and a "Grantor"), **JAC INTERMEDCO, INC.**, a Delaware corporation ("JAC Intermedco" and a "Grantor") and each other Person signatory thereto as a Grantor (together with any other Person that becomes a party thereto as provided therein, the "Grantors") in favor of LASALLE BANK NATIONAL ASSOCIATION, as the administrative agent (the "Administrative Agent") for all the Lenders party to the Amended and Restated Credit Agreement (as defined in the Guaranty and Collateral Agreement); and

WHEREAS, pursuant to the Guaranty and Collateral Agreement, [Co-Borrower] granted to the Administrative Agent a lien on and security interest in, among other things, all inventory and equipment, including, without limitation, all railcars then owned or thereafter acquired by [Co-Borrower], including the railcars identified in Exhibit A hereto, (the railcars identified on Exhibit A, the "Released Railcars"); and

WHEREAS, to perfect and evidence the grant of the security interest to the Administrative Agent in all railcars then owned or thereafter acquired by [Co-Borrower], a copy of the Guaranty and Collateral Agreement was duly recorded and filed with the Surface Transportation Board pursuant to 49 U.S.C. §11301 on \_\_\_\_\_, 2005, under Recordation Number \_\_\_\_\_; and

WHEREAS, [Co-Borrower] has requested the Administrative Agent to release from the lien of the Guaranty and Collateral Agreement the Released Railcars and any right, title or interest which the Administrative Agent may have in or to the Released Railcars, other than the continuing lien of the Administrative Agent in and to any proceeds from the sale or other disposition by [Co-Borrower] of the Released Railcars, and [Co-Borrower] has represented and warranted to Administrative Agent that [Co-Borrower] has complied with all conditions of the Guaranty and Collateral Agreement precedent to such release.

NOW, THEREFORE, for and in consideration of Ten Dollars (\$10.00) and other good and valuable consideration, receipt whereof is hereby acknowledged, and pursuant to the authority vested by the Guaranty and Collateral Agreement in the Administrative Agent, the



Administrative Agent does hereby RELEASE, REMISE, CONVEY AND QUIT CLAIM unto [Co-Borrower], its successors and assigns (without representation, warranty or recourse of any kind), all of the right, title, lien, interest, claim or demand whatsoever which the Administrative Agent has or may have acquired under, through or by virtue of the Guaranty and Collateral Agreement in and to the Released Railcars, excepting, however, the continuing lien of the Administrative Agent in and to all proceeds realized by [Co-Borrower] from the sale or other disposition of the Released Railcars.

THIS INSTRUMENT is executed upon the express condition that nothing herein contained shall be construed to release from the lien of the Guaranty and Collateral Agreement, or to impair said lien upon any property subject hereto, except the Released Railcars.

IN WITNESS WHEREOF, the Administrative Agent has caused this instrument to be duly executed and delivered by its duly authorized officer as of this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_.

LASALLE BANK NATIONAL ASSOCIATION,  
as Administrative Agent

By: \_\_\_\_\_  
Title: \_\_\_\_\_